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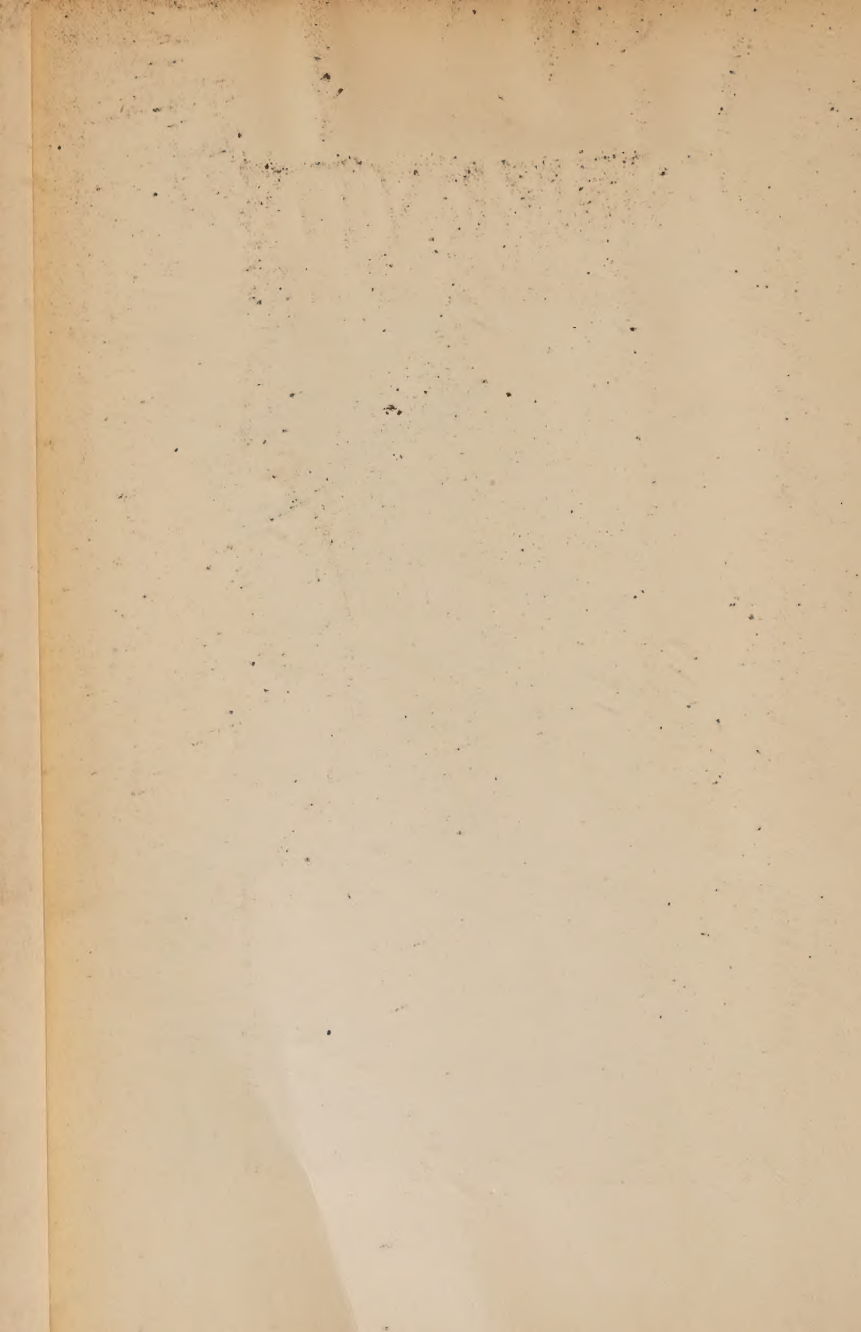
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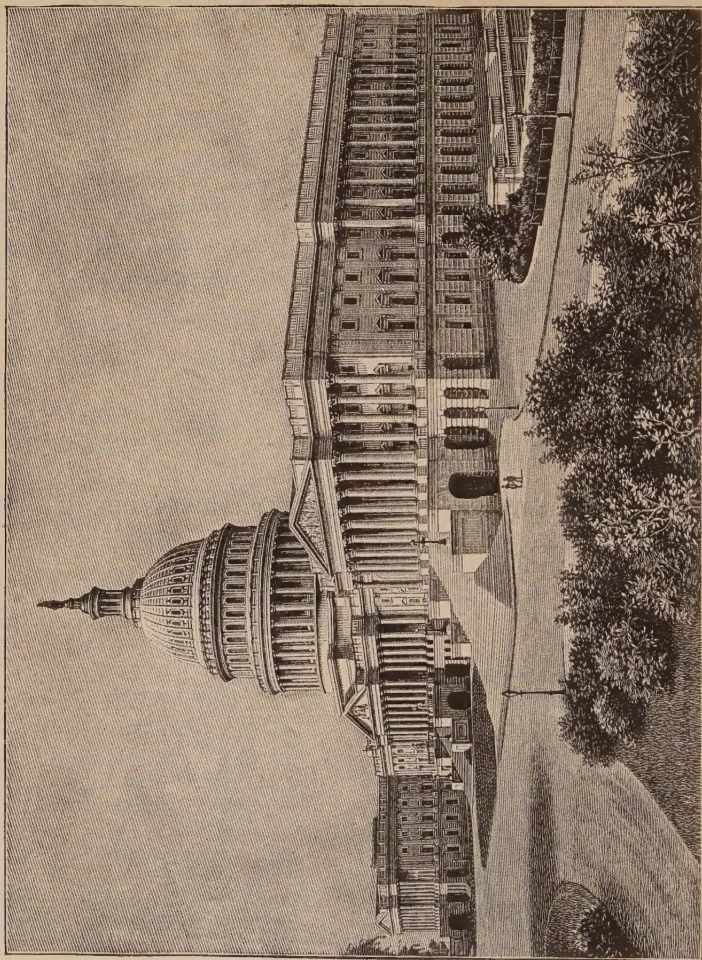
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TO
MY MOTHER AND FATHER, PIONEERS IN
"BLEEDING KANSAS"



The Capitol at Washington

THE GOVERNMENT OF NORTH DAKOTA

BY

JAMES E. BOYLE, PH. D.

PROFESSOR OF ECONOMICS AND POLITICAL SCIENCE IN THE
UNIVERSITY OF NORTH DAKOTA



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PREFACE

This book deals with the government of both the Nation and the State.

There are already many good books dealing with civil government, and a few excellent ones. Yet the author feels justified in adding one more book to the list. This work differs in two important particulars, from the usual text-book in civil government. In the first place this is not a formal treatment of the dry bones of the subject, on the one hand, nor is it, on the other hand, a work on elementary sociology. Both extremes are carefully avoided. Civil government is presented, however, with proper emphasis on the political and sociological bearings of government. In the second place, the Federal principle of our government is given great prominence in the treatment of the framework of Federal and State government. The two constitutions, Federal and State, are studied together, in parallel column.

A large part of this book deals with local government. In spite of the many encomiums pronounced on the virtues of our purely local government, all thoughtful people must confess that here, only too often, democracy has gone to seed. The writer has attempted to point out flaws as well as virtues in our system of government. On matters that are debatable he has endeavored to present both sides with fairness. Since the book treats of actual government as well as of the framework of government, some attention is given to such subjects as legislative methods, party manage-

ment, the boss, the ring, the machine, and the larger reform movements, such as primary elections and the commission plan of city government. Stimulating quotations from the world's greatest thinkers are used at the beginning of nearly every chapter of the book. This impresses the student with the true dignity of the subject, and energizes him with an intelligent patriotism.

The teacher in using this book will find help in the questions on the text, the questions suggested by the text, and the select bibliography at the close of each chapter. The successful teacher will also undoubtedly supplement the book with these two devices:

1. Current Events. At least once a week a searching review should be made of current events, selecting for the purpose those events which have political and social significance.

2. Scrapbook. By all means let the teacher see that a scrapbook on civics is prepared by the class. It should contain things relating to politics and civics, such as clippings from the ordinary newspaper or magazine, pictures of officials, sample ballots, campaign announcements and posters, official messages and reports, news items about courts, trials, proceedings of city councils, county commissioners' proceedings, educational statistics, etc. The material should be arranged in the same order as the subjects treated in this book, as shown by the table of contents. A suitable scrapbook can be procured from any local dealer at a very small cost. One large scrapbook may be used by the entire class, or smaller scrapbooks by the individual members of the class. If this collection is carefully compiled, each year will see a good up-to-date scrapbook added to the school library. Teacher and pupils should coöperate in

filling this scrapbook. Back numbers of such a scrapbook would soon acquire real value as records of political history, local, State, and National.

The author takes this occasion to acknowledge his debt of gratitude to those who by friendly advice and criticism have helped in the preparation of this work. In this way Dean Joseph Kennedy of Teachers' College, University of North Dakota, has been of true service. Especial mention must be made of Dr. M. Jacobstein, of the Department of Economics and Political Science of the same University, who by his sustained interest in the work and by his repeated criticisms and scholarly suggestions, has done much to improve the quality of the book. For the imperfections of the book, however, the author desires to accept the full responsibility.

Acknowledgment should also be made to various publishers for permission to quote from their publications named below. From Bryce's "The American Commonwealth," a complete edition of which is published and copyrighted by The Macmillan Company; Hart's "Actual Government," published by Longmans, Green & Co.; Harrison's "This Country of Ours," by Charles Scribner's Sons; the "Century Magazine" and Fairlie's "Local Government," by The Century Co.; Dunn's "Community and the Citizen," by D. C. Heath & Co.; McVey's "Government of Minnesota," by The Macmillan Company; Wilson's "Congressional Government," by Houghton Mifflin Company.

JAMES ERNEST BOYLE.

University of North Dakota,
Grand Forks, North Dakota.

CONTENTS

PART I

THE NATURE AND PRINCIPLES OF GOVERNMENT

	PAGE
CHAPTER I. NATURE OF GOVERNMENT AND THE STATE . . .	15
Necessity of Government. The State. Rights and Duties of Citizens. The Origin of the State. Importance of the Family. Civil Government and Civics.	
CHAPTER II. KINDS OF GOVERNMENT	20
Classification. Monarchy: Subdivisions. Aristocracy. Democracy: Two Kinds. Miscellaneous Doctrines of Government: Communism; Socialism; Nihilism; Anarchy. Branches of Government: Legislative; Executive; Judicial. The Constitution. Federal Principle. Summary.	

PART II

RISE OF AMERICAN INSTITUTIONS

CHAPTER III. SOURCES OF AMERICAN INSTITUTIONS . . .	30
English Background: English Precedents of Free Government; Magna Charta; Representative Government; Common Law; Summary.	
CHAPTER IV. GROWTH OF AMERICAN INSTITUTIONS	38
Introductory. Town Meeting. Colonial Governments. Oppressions. Union: Preliminary Steps; Stamp Act Congress; First Continental Congress; Second Continental Congress. The Confederation. The Constitution. Appendix with Complete List of Delegates to the Constitutional Convention, Those Signing the Constitution, Those Refusing to Sign, and Those Refusing to Attend.	

PART III

THE FEDERAL CONSTITUTION OR FRAMEWORK OF
GOVERNMENT

PAGE

CHAPTER V. ANALYSIS OF THE FEDERAL CONSTITUTION . . .	53
The Federal System. Preamble. Legislative Branch. Executive Branch. Judicial Branch. The States and Territories. Miscellaneous Provisions. Ratification. Amendments.	

PART IV

THE FEDERAL GOVERNMENT IN ACTION

CHAPTER VI. THE EXECUTIVE: THE PRESIDENT	59
Introductory. Nomination of President. Election: Some Results of the Electoral College. Qualifications. Term. Salary. Presidential Succession. Powers and Duties. Military; Treaty-making; Pardoning; Appointing; Legislative. Impeachment. Vice President.	
CHAPTER VII. THE EXECUTIVE (CONTINUED): THE DEPARTMENTS	76
The Cabinet. Appointment. Removal. Salary. State. Diplomatic Service; Consular Service. Treasury. War. West Point. Justice. Post Office: Organization of Department; Free Delivery; Money by Mail; Telegraph. Navy: Annapolis. Interior: Public Lands; Indians; Pen-sions; Patents; Education; Geological Survey. Agriculture: Weather Bureau; Forestry; Good Roads; Pure Food; Information. Commerce and Labor: Corporations; Labor; Manufactures; Fisheries; Census. Separate Commissions and Officers.	
CHAPTER VIII. THE SENATE	99
Composition. Work. Committees. Influence. Summary.	
CHAPTER IX. THE HOUSE OF REPRESENTATIVES	106
Composition. House at Work. Speaker. Committee System.	

	PAGE
CHAPTER X. CONGRESS	113
Long and Short Sessions. Powers, Express and Implied: Taxing; Commercial; Territorial; Panama Canal Zone; Miscellaneous Powers. Prohibitions on Congress. Process of Lawmaking. Committee System. Summary. Freedom of Debate. Record. Output of Legislation.	
CHAPTER XI. THE FEDERAL JUDICIARY	128
Federal Courts. Federal Judges. Supreme Court. Circuit Courts of Appeals. Circuit Courts. District Courts. Court of Claims. Jurisdiction of Federal Courts. Equity. Court Officers. Workings of the Courts.	
CHAPTER XII. PUBLIC FINANCE, MONEY, AND BANKING	139
Public Finance. Expenditures: Objects of. Revenue: Sources of. Who Pays the Federal Tax? Criticisms. Cost of Collection. Debt. Subtreasury System. Money. Currency. National Banking System: Weakness of.	
CHAPTER XIII. THE NATION AND THE STATES	155
Guarantee of Republican Government. Invasion or Domes- tic Violence. Interstate Comity. Extradition of Criminals. Public Domain. Disposal by Gifts; by Sale. Survey. Division of Powers Between Nation and States. Protec- tion to Person and Property. Police Power.	

PART V

THE STATE CONSTITUTION OR FRAMEWORK OF GOVERNMENT

CHAPTER XIV. ANALYSIS OF THE CONSTITUTION OF NORTH DAKOTA	171
The Constitution, Four Parts: (I) Preamble; (II) Bill of Rights; (III) Constitution Proper, Legislative Branch, Ex- ecutive Branch, Judicial Branch, Future Amendments, Elective Franchise, Corporations, Education, Schools and Public Lands, County and Township Organization, Rev- enue and Taxation, Public Debt and Public Works, Militia, Impeachment and Removal, Miscellaneous, Prohibition; (IV) Amendments.	

PART VI

THE STATE GOVERNMENT IN ACTION

	PAGE
CHAPTER XV. HISTORICAL	183
Location and Area. Topography. Climate. Resources. Native Inhabitants. Exploration. Settlement. Dakota Territory. Enabling Act. Constitutional Convention. State of North Dakota. Amendments to Constitution. Growth of State.	
CHAPTER XVI. THE EXECUTIVE	201
The Chief Executive. Powers and Duties of Governor: Leg- islative; Executive (Appointing, Military, Law Enforce- ment); Social; Miscellaneous. Lieutenant Governor.	
CHAPTER XVII. THE EXECUTIVE (CONTINUED): DEPART- MENTS AND INSTITUTIONS	208
Executive and Administrative Departments. Eight Execu- tive Departments. State. Auditor. Treasurer. Educa- tion. Insurance. Railroads. Law. Agriculture and La- bor. Boards and Commissions. State Institutions.	
CHAPTER XVIII. THE LEGISLATURE	220
Members. Qualifications. Quality. Prohibitions on Legis- lation. Organization of Two Houses. Methods of Passing a Bill. Rules. Lobby. Enacting Clause. Emergency Clause. Impeachment. Output of Legislation. Growing Complexity of Legislation. Legislative Reference Library.	
CHAPTER XIX. THE JUDICIARY	229
Courts. Supreme. District. Local.	
CHAPTER XX. ADMINISTRATION OF JUSTICE	234
Principles. Local Courts: Justice of Peace Courts; Police Court; County Court. District Courts. Writs of Habeas Corpus; Mandamus; Injunction; Quo Warranto. Supreme Court. Jury System: Grand Jury; Petty Jury. Criticism of Jury System. Judicial Procedure: Criminal Action; Civil Action. New Trial and Appeal. Declaring Statutes Void.	

CHAPTER XXI. LOCAL GOVERNMENT: COUNTY, TOWNSHIP, VILLAGE	249
Organs and Functions. The County. County Commissioners. County Officers: Auditor; Treasurer; Sheriff; Clerk of Court; Register of Deeds; State's Attorney; Judge; Super- intendent of Schools; Public Administrator; Coroner; Sur- veyor; Minor Officers. Township. Officers and Duties. Village. Officers and Duties. Functions of Local Govern- ment. Education. Public Health. Finance and Taxation. Good Roads. Police and Justice. Charity: Methods of Poor Relief, Indoor and Outdoor. Poor Farm. County Hospital.	
CHAPTER XXII. THE CITY	278
Forms of City Government. Mayor and Council Plan. The Commission Plan. Analysis and Comparison of Two Plans.	
CHAPTER XXIII. ELECTIONS AND POLITICAL PARTIES	288
Nominations. Need of Nominations. Methods of Nomina- tion: Caucus and Convention System (Boss, Ring, Ma- chine); Primary Election System (Primary Election Law, Nonpartisan Judiciary Ballot); Independent Nominations. The Campaign. The Election.	
CHAPTER XXIV. REVENUE AND EXPENDITURE	297
Introductory. Expenditures: Limits; Objects; Expenditures Classified. Revenue: Sources of, Classified; United States, Investments, Interest, Land, Industries, Fines, Fees, Tax- ation. Kinds of taxes: General Property; Corporation Tax; Inheritance Tax. Debt.	
CHAPTER XXV. EDUCATION	308
State Educational System. School District. Flags. Free Textbooks. School Board. State High School Board. The Teacher. Teachers' Institute. Branches Taught. The Pupil. The Support of Schools: Taxation; State Tuition Fund; Borrowing; Permanent School Fund.	
APPENDIX A. ARTICLES OF CONFEDERATION	i
APPENDIX B. CONSTITUTION OF THE UNITED STATES	ix

	PAGE
APPENDIX C. ENABLING ACT	xxiv
APPENDIX D. CONSTITUTION OF THE STATE OF NORTH DAKOTA	xxxv
APPENDIX E. STATE EXECUTIVE AND ADMINISTRATIVE OFFICERS, BOARDS, AND COMMISSIONS	lxxix
APPENDIX F. TABLES OF TENTH AND ELEVENTH LEGISLATIVE ASSEMBLIES OF NORTH DAKOTA, SHOWING OCCUPATION, NATIVITY, EDUCATION, AND PARTY, OF MEMBERS	lxxxiii
APPENDIX G. SIXTY-FIRST CONGRESS AND ELECTORAL VOTE OF THE STATES	lxxxv
INDEX	lxxxvii

TO THE READER:

Let us get acquainted before you read further. This book does not tell you all about civil government. In fact, you will learn but very little about civil government from this book or from any other book. Your teacher or your father has learned very little civics from any one book. Yet the textbook is a very useful thing, in fact an almost indispensable thing. It will introduce you, day by day, to the things that are really significant in our government, to the principles underlying and explaining our institutions, and to the tendencies and changes now at work. You are living to-day, *now*, in the midst of Federal, State, and local government activities. A full systemized knowledge of these activities constitutes a full knowledge of civil government. This book is merely a laboratory guide to these activities. Used in this way it will prove helpful to you. You are urged, therefore, to keep a scrapbook or some similar classified collection of materials relating to civil government. You are urged to cultivate a scholarly and discriminating interest in current events.

There are two unsettled questions in civics which this book cannot answer and does not try to answer. They are, (1) To what extent should the administration of local government be centralized under State control? (2) To what extent should the Federal government be given centralized control over activities now administered by the State?

If you can answer these questions aright you will be an intelligent voter.

Sincerely yours,

THE AUTHOR.

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PART I

THE NATURE AND PRINCIPLES OF GOVERNMENT

CHAPTER I

NATURE OF GOVERNMENT AND THE STATE

"Man is by nature a political animal. . . . A social instinct is implanted in all men by nature, and yet he who first founded the state was the greatest of benefactors. For man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all; since armed injustice is the more dangerous, and he is equipped at birth with the arms of intelligence and with moral qualities which he may use for the worst ends. Wherefore, if he have not virtue he is the most unholy and the most savage of animals, and the most full of lust and gluttony. But justice is the bond of men in states, and the administration of justice, which is the determination of what is just, is the principle of order in political society." ARISTOTLE, "Politics," I, 2.

Necessity of Government.—Over two thousand years ago one of the world's greatest thinkers described man as a "political animal." Man is indeed one of the most social of all beings; the greater part of the life of most men is spent in daily contact with the lives of other human beings. To such an extent is this true that persons forced by their occupations to live alone in remote regions, such as sheep herders, have often become insane from sheer loneliness. In all ages persons who have chosen to live by themselves in out-of-the-way places, and apart from other men, have been looked upon as peculiar beings, to say the least.

Men naturally associate with one another, forming a relationship which is called *society*. The study of the nature and development of this relationship is *sociology* or *social science*. Since men associating with one another do not always know what is the right thing to do, or are not willing to do the right thing, disputes and conflicts arise. There are, unfortunately, both fools and knaves in the world. And thus, since men are not perfectly wise or are not morally perfect, there must be in every association some rules to govern conduct and some power to enforce these rules. The act of making and enforcing rules is called *government*. Every one is familiar with such terms as family government, church government, and school government. Doubtless the four greatest social institutions produced by all the civilization of the past are the family, the church, the school, and the state. Each has its own peculiar government, and yet the state includes all these institutions in itself, and makes rules for the protection and preservation of them all. It is with the government of the state that this book deals.

The State.—A state, in the sense here used, is an independent body of politically organized people, occupying a definite territory. There are four elements—persons, territory, organization, independence. The power of the state, exercised through the government of the state, must be the supreme power within the territory of the state; the possession of such power is called *sovereignty*. For example, the United States is a state; and so are France, Italy, and Mexico. The various “States” of the United States, as New York and Minnesota, are not quite real states, because they do not possess complete sovereignty.

Rights and Duties of Citizens.—Members of a state are called *citizens*. Every individual has certain duties and certain rights; but the individual's perception of his rights is always much clearer and keener than his perception of his duties. A *right* may be defined as that which any one is entitled to have, or to do, or to require from others within the limits prescribed by law. A *duty*, on the other hand, is that which any one owes to others, or which is required of any one within the limits of the law. In brief, we may say, a right is what others owe us; a duty is what we owe others. Thus rights and duties are reciprocal. As a citizen, the individual has certain political and civil rights, as they are called. We may classify the rights of a citizen as follows:

(1) The right of protection to life, liberty, and property.

(2) The right to share in all that the state does for the individual. This includes the right to an education at state expense; a right to use the public roads, and to ride on railroads at the legal fare; in case the citizen is unable to care for himself, a right to be kept from starvation; if he goes insane, a right to the shelter of a public asylum.

(3) The right of the citizen who is a voter to take part in the government, as by voting and holding office.

The duties of the citizen correspond to the rights. They are classified as follows:

(1) The duty to obey the law, Federal, State, and local.

(2) The duty to do military service. This is a duty of every able-bodied male citizen, and may mean the laying down of the citizen's life for the protection of the life of the state.

(3) The duty of citizens who are voters to take part in public elections.

The Origin of the State.—Investigators have tried to discover the beginnings of the state. The earliest form of government discovered is that of the family, and hence the family is looked upon as the germ of the state. The family is an embryo state. The primitive family supplied all the needs of all its members. Then the state arose, from the enlarged family, to supply many of these needs. To-day we find the state doing more and more to protect the life and health and property of its members, to supply their desire for knowledge, and to promote and satisfy the social desire for righteousness and beauty.

Importance of the Family.—"Although, as a community grows, various means may arise to help the family to provide for the wants of its members, the family must always bear an important part of the responsibility for the welfare of its members. No matter how good the doctors, the health of the people in any community depends more on the family than on anything else. No matter how efficient the schools, a great responsibility rests on the family for the proper education of the children. No matter how many social organizations there may be in the community, the social life of the home is the most important of all. . . . No matter how excellent the government of a community may be, it can have little good results if the government in the home is lacking. The surest way to secure good government in the community is through careful government in the homes that make up the community."¹

¹ Dunn, "The Community and the Citizen," p. 24.

Civil Government and Civics.—*Civil government* means that institution or aggregate of institutions by which a state exercises its authority over its citizens. The science which treats of civil government is commonly known as *civics*.

QUESTIONS ON THE TEXT

1. Is man by nature social or nonsocial? Explain your meaning.
2. What is society? Sociology?
3. What is government? Why is it necessary?
4. Name some familiar forms of government.
5. What are our four greatest social institutions?
6. What is the state?
7. Who are citizens?
8. Define rights; duties.
9. Name the principal political and civil rights; duties.
10. What is the probable origin of the state?
11. How may the family help the state? Injure the state?
12. Define civil government; civics.

QUESTIONS SUGGESTED BY THE TEXT

1. Why is man called a "political animal"?
2. Which comes first in history, government or the state?
3. What ancient Hebrew family developed first into tribes and then into a state or nation?
4. Which is more important to the individual, the family or the state?

REFERENCES

- Small and Vincent, "Introduction to the Study of Society," pp. 23-98.
 Dunn, "The Community and the Citizen," pp. 1-33.
 Coulanges, "The Ancient City," pp. 49-153.
 Wilson, "The State," pp. 1-15.
 Allen, "Civics and Health," pp. 3-22.

CHAPTER II

KINDS OF GOVERNMENT

"They [the political institutions of the United States] represent an experiment in the rule of the multitude, tried on a scale unprecedentedly vast, and the results of which every one is concerned to watch. And yet they are something more than an experiment, for they are believed to disclose and display the type of institutions towards which, as by a law of fate, the rest of civilized mankind are forced to move, some with swifter, others with slower, but all with unresting feet." BRYCE, "American Commonwealth," Vol. I, p. 1.

"Society is marching with long strides towards democracy. . . . Is it a good? Is it an evil? I know little enough; but it is, in my opinion, the inevitable future of humanity." CAVOUR.

Classification.—There are three classes of governments, based on three forms of sovereignty. They are (1) Monarchy, government by one person, (2) Aristocracy, government by the few, and (3) Democracy, government by the many.

1. Monarchy.—A monarchy is a government by one person, or a state so governed. The monarch—that is, the person in whom is the sovereignty—may be called king, emperor, czar, sovereign, sultan, shah, or may have some other title. Monarchies are classified in two ways: first, as to the power of the ruler; and second, as to the succession of rulers.

Division of Monarchies as to Power.—With respect to power, monarchies are divided into two classes: Absolute Monarchies, and Limited Monarchies.

A. Absolute Monarchy.—An absolute monarchy is a monarchy in which the authority of the ruler is not limited by a constitution or by any other principles of government. Such a government may be tempered by the ruler's wisdom and benevolence, or only by his fear of assassination. Russia and Turkey, up to a few years ago, were such governments. *Autocracy* and *despotism* are other names applied to this form of government.

(a) *Tyranny.*—In the ancient Greek states, an absolute ruler who came to the throne illegally, whether he gave a good or a bad government, was known as a *tyrant*, and his government was called a *tyranny*. These terms are now used, like despot and despotism, of any absolute ruler and his government.

(b) *Theocracy.*—A government in which the supreme authority comes direct from God is called a *theocracy*. Thus Moses received the Law from God on Mount Sinai, and hence the Jewish government at this time was a theocracy.

(c) *Patriarchy.*—A patriarchal form of government is one in which the father or head of the family is the sovereign. Abraham is the best example of a patriarch. His "family" was a large one, corresponding somewhat to the tribe of other nations.

B. Limited Monarchy.—A limited monarchy is by far the more common form of monarchy to-day, despotism being doomed to die out among mankind. We may define a *limited monarchy* as one in which the authority of the ruler is limited by a constitution. Indeed, this form of government is commonly spoken of as *constitutional* government. The revolutions of the past few years in Russia, Turkey,

Persia, and elsewhere were intended to bring about constitutional government. So also were the historic revolutions of 1848 in Europe. Frederick William IV, absolute ruler of Prussia at this time, declared to his people who were asking for a constitution, that no power on earth should ever induce him to allow "to come between Almighty God in heaven and this land a blotted parchment, to rule us with paragraphs, and to replace the ancient, sacred bond of loyalty."

Germany, Austria, Italy, Spain, Denmark, Norway, Sweden, and many other states are limited monarchies. In Great Britain the king's authority is so narrowly limited that the government is a monarchy in name only. The British constitution leaves nearly all power in the hands of the people and their representatives, the House of Commons. For this reason we sometimes hear England spoken of as the greatest republic on earth.

Division of Monarchies as to Succession.—With reference to the ruler's title to his throne, monarchies are of two classes: Hereditary, and Elective.

A. Hereditary.—An hereditary monarchy is one in which the sovereign obtains his title to the throne by birth. The usual rule of inheritance is from the father to his eldest son. Thus Edward VI of England, though a mere boy, succeeded to the throne of his father Henry VIII, in preference to his older sisters, Mary and Elizabeth. If there is no son, the throne usually goes to the eldest daughter. Nearly all the monarchies of the world are hereditary monarchies.

B. Elective.—An elective monarchy is one in which the ruler is chosen by the people or by a class of the people.

Thus at one time the nobles of the kingdom of Poland chose the king. The kings of the early Germans in the days of Tacitus were also elected. There have been but few such monarchies.

2. Aristocracy.—An aristocracy is a form of government, or a state, in which the authority to rule is in the hands of a few persons. These few constitute a class, and derive their exalted position from their birth, wealth, or power. The word aristocracy signifies government by the best. When a few rule and the resulting government is oppressive, it is sometimes called an *oligarchy*, a perverted form of aristocracy. Venice, Florence, and other Italian cities during the Middle Ages were good examples of an aristocracy, each of these cities being governed by a few powerful families.

3. Democracy.—A democracy is a form of government, or a state, in which the sovereignty or supreme power is in the hands of the people. There are two kinds of democracies: Pure Democracies, and Representative Democracies or Republics.

A. Pure Democracy.—A pure democracy is one in which the people themselves, and not their representatives, meet together and carry on government. A New England town meeting is a noted example of a pure democracy in local affairs. The North Dakota township meeting may be called the same. Some small cantons in Switzerland still practice this form of government in local matters. It is evidently possible for a very small community only to express its will in this direct way. In America the school district, township, or village is the only unit where it is feasible for

all the people to meet in public assembly and exercise their will on all questions confronting them. It is for this reason that a representative government, or republic, becomes necessary.

B. Representative Democracy, or Republic.—A republic is a state in which representatives of the people, and not the people themselves, carry on government. The United States is a good example of a republic. The citizens elect representatives to whom is delegated the government of the country. The State of North Dakota likewise has a republican form of government, and for the same reason. We may add that even the city and county, being organized largely after the pattern of the State and Nation, have also a republican form of government in their local affairs. But the township in North Dakota, as said before, like the New England town, has a purely democratic government in its local affairs, since here the voters assemble and decide questions of highway improvements for the year, poor relief, and various other matters of local interest, and, finally, tax themselves to pay for this government. Here indeed do we discover the simplest test of a democracy. Are we taxed by our representatives? then our government is republican. Do we tax ourselves? then our government is a pure democracy.

The leading republics besides our own are France, Mexico, and the several states of South America.

Miscellaneous Doctrines of Government.—In addition to the three foregoing forms of government there are four kinds of “government” which exist in theory, but nowhere on a large scale in practice. They are Communism,

Socialism, Nihilism, and Anarchism. Each has its advocates in this and other countries.

Communism is a "system of society in which private property is abolished and all goods are held in common, the needs of each individual being supplied from public sources." ("International Encyclopedia.") On a small scale a few religious societies in America are now practicing communism. Jamestown, when founded in 1607, was provided with a common storehouse in which the products were kept and from which each received according to his needs. The Pilgrims at Plymouth had a similar arrangement for two years and gave it up. For a long time much land in each town was held in common, and the Boston Common of to-day is a survival of this custom.

Socialism is an ideal economic condition in which the methods of production, distribution, and exchange of wealth will be under social control. Under socialism there would be no private ownership of land and capital, but merely private ownership of the fruits of land, labor, and capital. There would be no struggle of competition. In this way, the socialists claim, they would abolish poverty from the world, and poverty being gone, the dying out of the saloon, the brothel, misery, and all the social ills would follow as a natural sequence. The arguments for and against socialism cannot be adequately stated here. The two common criticisms of socialism are: (1) The miseries of society are not all due to poverty, but have a deeper cause; (2) The struggle of competition is needed to bring out the best efforts of man.

Nihilism, from the Latin word *nihil*, meaning nothing,

signifies the overthrow, by force, of all government. As commonly used the word is applied to the organized revolt against the Russian absolute monarchy. The political exiles in Siberia are largely nihilists and those merely suspected of being nihilists.

Anarchy means no government. Anarchists are of two kinds: (1) Some believe in the overthrow of government by assassination and force; these are the same as Nihilists, and are forbidden to come into the United States from any foreign country. (2) The philosophical anarchists are peaceful and believe in teaching their doctrines of the evils of government and the blessings of no government. When all are converted, they teach, and when all have become good enough and wise enough, government will die out as useless and outgrown. But that day none of us will live to see. Meanwhile, we shall probably have more government, not less. Anarchy is the exact opposite of socialism.

Branches of Government.—Every government, no matter what its form, has three duties to perform. It must (1) make laws, (2) enforce laws, and (3) interpret laws. Accordingly, we have in a republic three distinct departments or branches of government, which are wisely kept separate as much as possible. The object of this separation of power is to create a system of checks and balances, each department of government being a check upon the others.

1. Legislative Branch.—The legislature has the important duty of making new laws from time to time, as they are needed.

2. Executive Branch.—The executive department must

execute or administer all the laws of the state, whether they be good or bad laws.

3. Judicial Branch.—The judiciary must interpret and apply the laws in all individual cases brought before them.

The Constitution.—The fundamental law or set of principles under which a state is governed is termed a *constitution*. As the word is used in the United States it means a written instrument; but in England it is used to signify a set of principles found partly written in Magna Charta and other charters, and in treaties and statutes, and partly in unwritten customs. And hence it is said that we have a written constitution, while England has an unwritten constitution. But it should be remembered that our constitution has grown very much by custom and usage in the last hundred years, and hence an important part of our constitution also is unwritten. Were it not for this fact, our constitution would be too inflexible.

That a constitution is very necessary, the long and bloody experience of mankind has shown. It is needed to protect the minority against the impulses and tyranny of the majority, or the apathetic and disorganized majority against a powerful minority. While it is proper for us to look upon our Constitution as almost a sacred document, yet we should not hesitate to make careful changes in it when wisdom and experience dictate such a course.

The Federal Principle.—The United States is a republic and France is a republic, and yet the governments of these two states are very much unlike. France in her local affairs is governed very much from Paris; we in our

local affairs are governed not at all from Washington. The French have a centralized or national republic; we have a federal republic. The federal principle is that each State in the Union is a supreme sovereign in certain matters affecting it alone, and that the Federal Government is the supreme sovereign in such matters of general concern as are delegated to it by the United States Constitution. We have an "indestructible Union of indestructible States." To trace the delicate line between Federal powers and State powers is a work which has occupied the minds of the greatest constitutional lawyers that this country or any other has ever seen. The Civil War was a test of this great question. One thing at least is certain: sovereignty rests neither with the Federal Government nor with the States, but with the people of the United States.

Summary.—We have now seen what form of government, among the many in the world, has been worked out in the United States. It remains to trace, in the following chapters, the sources and the development of this form of government, that we may clearly understand the background and setting of our institutions. Having performed this brief and pleasant task, we shall then examine in detail the framework and actual workings of our government.

QUESTIONS ON THE TEXT

1. Name three classes of government. What is the basis of the classification?
2. Define each class.
3. Classify monarchies (1) as to power of ruler, and (2) as to succession.
4. Define and give an example of each class.

5. Define and give example of a tyranny; theocracy, patriarchy.
6. What did Frederick William IV of Prussia think about constitutional government?
7. What is the difference between aristocracy and oligarchy?
8. What is the difference between a republic and a pure democracy?
9. What is the real test of a democracy?
10. Explain communism; socialism; nihilism; anarchism. Criticize each.
11. What are the three branches of government? Why have checks and balances?
12. Define constitution. Need of constitution.
13. What is the federal principle?

QUESTIONS SUGGESTED BY THE TEXT

1. What is the difference between a limited monarchy and a republic?
2. Is government by a wise and benevolent despot to be preferred to that by ignorant and corrupt representatives? Why?
3. Compare the French and American republics as to (1) position of their presidents; (2) centralization of legislative power.
4. What are the advantages of a written constitution? The disadvantages?
5. Is England a republic?

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PART II

RISE OF AMERICAN INSTITUTIONS

CHAPTER III

SOURCES OF AMERICAN INSTITUTIONS

"Yet, after all deductions, it [the Constitution] ranks above every other written constitution for the intrinsic excellence of its scheme, its adaptation to the circumstances of the people, the simplicity, brevity and precision of its language, its judicious mixture of definiteness in principle with elasticity in details. . . . The American Constitution is no exception to the rule that everything which has power to win the obedience and respect of men must have its roots deep in the past, and that the more slowly every institution has grown, so much the more enduring is it likely to prove. There is little in that Constitution that is absolutely new. There is much that is as old as Magna Charta." BRYCE, "American Commonwealth," Vol. I, p. 25.

"His majesty's liege subjects in these colonies are entitled to all the inherent rights and privileges of his natural born subjects within the kingdom of Great Britain." Stamp Act Congress, 1765, "Declaration of Rights and Grievances."

English Background.—In 1728 the Massachusetts assembly said it was the "undoubted right of all Englishmen, by Magna Charta, to raise and dispose of money for the public service, of their own free accord, without compulsion." English, French, Dutch, Scandinavians, Germans, and other people settled the original thirteen colonies; but it was the English language that survived and prevailed. So too with the institutions of government:

English institutions took root and survived. And when the colonists revolted, it was because their English rights were being trampled upon. The Revolutionary War was not a war of Americans against Englishmen, but a war of English against English, Englishmen fighting for certain principles of constitutional government against Englishmen fighting for certain mistaken principles of absolute government. And our victory was a victory for constitutional government on both sides of the Atlantic.

It is interesting to notice some of the free English institutions of government that have come down to us.

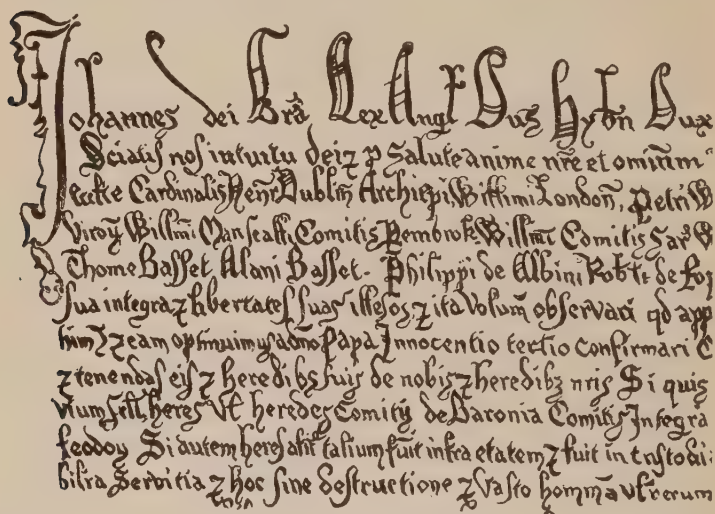
English Precedents of Free Government.—On June 15, 1215, a date which will never be forgotten, the Archbishop of Canterbury and some twenty sturdy barons met King John on a little island in the Thames called Runnymede, about fifteen miles above the city of London. Here the king was forced to acknowledge the rights of his people, “ancient rights” as they were even then called, and to assent to the Magna Charta. This “Great Charter,” with the stone seals of the king and barons, may be seen in the British Museum to this day. The principles of this great document have come down to us through seven hundred years of time, and to-day enter into our own Federal and State constitutions. True, at first they were but dimly seen, and indeed were often temporarily eclipsed, but to-day they shine forth as clear as the sun.

Of the sixty-three provisions of Magna Charta, the following are the important ones in our system of government:

Taxes (no taxation without representation).—“No scu-

tage¹ or aid² shall be imposed in our kingdom, unless by the general council of our kingdom; except for ransoming our person, making our eldest son a knight, and once for marrying our eldest daughter; . . . ”

Jury Trial.—“No free man shall be taken or imprisoned or disseized,³ or outlawed, or banished, or anyways



Johannes dei Gra Rex Angl Dux Hydn Dux
 Sciatz nos intuitu deiz p Salute anime nre et omnium
 Ectle Cardinalis Henr Dublin Archiepi, Willelmi London, Petri
 Viroi Willm Mar sealz Comitis Pembroke Willm Comitis Sar
 Thome Basset Alan Basset. Philippi de Albini Robti de For
 sua integraz libertates suas illegos z ita volum observari qd app
 tim z eam optinuimus adno Papa Innocentio tertio confirmari e
 z tenendas eis z heredibz huir de nobiz z heredibz nris Si quis
 vnum fuit heres vt heredes Comiti de Baronia Comiti Integra
 feodoy Si autem heres fuit talium fuit infra etatem z fuit in custodia
 infra servitia z hoc sine destructione z vasto hominu vtrorum

PART OF MAGNA CHARTA

The document is too wide to show full width. The portion shown above is the upper left corner, beginning with the Latin words for “John, by the grace of God, King of England, Lord of Ireland, Duke . . . ”

destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers,⁴ or by the law of the land.”

¹ Scutage: Military tax, paid in money instead of service.

² Aid: A feudal tax paid by the vassal to his lord.

³ Disseized: Dispossessed.

⁴ Peers: Equals; persons of the same rank.

Personal Rights.—"We will sell no man, we will not deny to any man, either justice or right."

"No bailiff from henceforth shall put any man to his law upon his own bare saying, without credible witness to prove it."

Property Rights.—"No constable or bailiff of ours shall take corn or other chattels of any man, unless he presently give him money for it or hath respite of payment by the good will of the seller. . . . Neither shall we, or our bailiffs, take any man's timber for our castles or other uses, unless by the consent of the owner of the timber."

Due Process of Law.—"If any one has been dispossessed or deprived by us without the legal judgment of his peers, of his lands, castles, liberties, or right, we will forthwith restore them to him: and if any dispute arise upon this head let the matter be decided by the five and twenty barons hereafter mentioned, for the preservation of the peace."

Petition for Redress of Grievances.—"The barons may chose five and twenty barons of the kingdom, whom they think convenient; who shall take care, with all their might, to hold and observe, and cause to be observed, the peace and liberties we have granted them, and this by our present charter confirmed; so that if we . . . shall in any circumstances fail in the performance of them toward any person, or shall break through any of these articles of peace and security, and the offense shall be notified to four barons chosen out of the five and twenty before mentioned, the said four barons shall repair to us . . ., and laying open their grievance, shall petition to have it redressed without

delay; and if it be not redressed by us . . . within forty days . . . the said five and twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all possible ways, . . . till the grievance is redressed according to their pleasure."

In working out the principles expressed and foreshadowed in Magna Charta—and a five hundred years' struggle it was—the people of England made two contributions of priceless value to mankind: (1) Representative Government and (2) The Common Law. We may conclude our account of the sources of our own institutions by describing briefly the development of these two landmarks of human liberty.

Representative Government.—Magna Charta speaks of the Great Council of the king which should be summoned in case taxes were to be imposed on the people. This was a good beginning, much better, indeed, than allowing the king to make personal and arbitrary levies of taxes. But even this beginning was stubbornly resisted by later kings. In time, however, the king summoned to his Parliament (as it began to be called) a certain number of "knights," that is, men not members of the nobility, men without title. These "common" men later formed the House of Commons, and from then on Parliament had two houses, the House of Lords and the House of Commons. When the common people began to elect members of the House of Commons, we may say that representative government was on its feet in England. But as the House of Commons grew strong, the king grew weak. "When two men ride on horseback, one must ride behind." Who shall rule England,

King or Commons? was a question not to be settled lightly. At last this issue was put squarely by King Charles I. For eleven years he ruled absolute, without any Parliament. Then if ever was the time to settle this question, once and for all. It was settled. Parliament rose against the king; it tried him as "tyrant and traitor"; it found him guilty; it led him to the block and chopped away his head. Since 1649 no king has needed or cared to ask the question again. Representative government for the English people became an established part of their constitution. This heritage came with the English settlers to America.

The Common Law.—The Magna Charta and the other charters obtained later declared general principles. But it was the Common Law, with its rules and maxims, which determined the extent of the protection these could give. The common law consists of that ancient body of customs, usages, and rights of the people, used and acquiesced in for a time "so long that the memory of man runneth not to the contrary." This law was the growth of centuries. So far as its maxims declared individual rights, they were a part of the constitution of England and of that "law of the land" mentioned in Magna Charta. Much of this old common law has been enacted into the written law of our American States, becoming thus our statute law and also a part of our Federal and State constitutions. However, a great mass of it is to be found only by going back to court decisions and reading its principles as applied by the judges. Thus it happens to-day that a lawyer will often go back to the decisions of English courts, published hundreds of years ago, and find correct principles of the common law,

fitting exactly the case in hand. Since no two cases are ever exactly alike, it is evidently impossible for a statute to be made to fit each case. In applying the principle of the statute, therefore, it is highly beneficial to fall back upon the rules of the common law for the guidance of sound and accredited precedent.

The colonists claimed that this code of law belonged to them, as English subjects, except in some particulars where it was found unsuited to the wants and conditions of the New World. Under it, they had well-known and well-defined rules of protection; without it they were thrown upon the mercy and caprice of the ruler. Among the causes impelling the colonists to separate from the mother country, these were enumerated: "Abolishing the free system of English laws," "Taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our government," "Depriving us in many cases of the benefits of trial by jury."

Summary.—Magna Charta has been described as the "Great Charter" of American liberties as well as of English liberties. Following it and partly springing from it have come the two other great English sources of our institutions, namely, representative government by the English Parliament, and the common law.

We are now ready to trace the growth of free institutions on American soil.

QUESTIONS ON THE TEXT

1. What praise does Bryce bestow on our constitution?
2. What peoples settled the colonies? The institutions of which people now prevail?

3. What principles were at stake in the Revolutionary War?
Were they "American" or English?
4. What were the three English precedents of free government?
5. Give an account of Magna Charta. Give a statement of its six principal provisions.
6. Give a short history of representative government in England.
7. Define common law. What use do our lawyers and judges make of it?
8. What abuses did the colonists complain of, as leading to separation?

QUESTIONS SUGGESTED BY THE TEXT

1. Give a history of the reign of George III.
2. Give an account of Oliver Cromwell.
3. Trace the fundamental principles of liberty, as written in Magna Charta in 1215, through various great documents, constitutions, etc., down to our own State Constitution.

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CHAPTER IV

GROWTH OF AMERICAN INSTITUTIONS

"We here highly resolve . . . that this nation, under God, shall have a new birth of freedom; and that government of the people, by the people, for the people, shall not perish from the earth." LINCOLN, "Gettysburg Address."

Introductory.—When the colonists settled America they were in a position where they had to act for themselves or perish. They lived in a wilderness, and would soon have been swept out of existence had they not protected themselves; and we find, accordingly, that self-government sprang up immediately in the different colonies. In 1619, to quote a later royal governor, "Representative government broke out in Virginia." The House of Burgesses, the first representative assembly in America, was called together by the Governor of Virginia. In New England local government took the form of the now famous town meeting. Educative discussions were held, and such questions as the following were settled:

"It is ordered that ye remainder of Mr. Allen's strong water, being estimated about 2 gallandes, shall be delivered unto ye handes of the Deacons of Dorchester for the benefit of the poore there, for his selling of it dyves time to such as were drunke by it, he knowing thereof."

"It is ordered that from the 15th day of the first month to the 25th day of the 8th month, it shall not be lawful for common

laborers, as hoers, reapers, tailors, etc., who were used to take after 2s. a day, to take above 28*d.* a day. . . .”

“For peace and love’s sake (it is ordered) that there shall be a new meeting house built.”

“Information is given to the selectmen that a leame gearle is lately come into town whose name is Wodckins, entertained at the house of Edward Cooke: Sergt. Kingsbury is desired to give notis to said leame gearle that she do depart forthwith out of this toune, and also give notis to said Edward Cooke that he is disallowed to entertain her in our said toune.”

The colonists, however, were English subjects, and had no thought, at first, of founding independent states of their own. They expected the king to govern them, according to the great principles of the English constitution, so far as new conditions would permit. And so along with their development of local self-government there went hand in hand an extension of English government over them. The two were bound in time to come into conflict. The story of this conflict and its outcome we may well discuss under four topics: (1) The Colonial Governments, (2) Preliminary Steps toward Union, (3) The Confederation, (4) The Constitution.

1. Colonial Governments.—The colonial governments, in their beginnings, allowed a great deal of liberty and home rule to the colonists. This looseness gradually gave way to oppression, followed in turn by resistance by the colonists and preliminary steps towards union. There was but one general type of colonial government, and it was the same in the three charter colonies, in the three proprietary colonies, and in the seven royal colonies. The three branches of this government were:

A. Legislative Branch, consisting of two houses, the

lower house being elected by the people in good English fashion. The laws passed by these bodies could be vetoed by the colonial governor, or overruled by the English government.

B. Executive Branch, consisting of a colonial governor with extensive powers in addition to the veto power. Rhode Island and Connecticut had elective governors; in the other colonies the governors were appointed by the proprietor or by the king.

C. Judicial Branch, consisting of judges usually appointed by the governor and responsible only to England.

Although in form the legislatures, the governors, and the judges were all subject to the English government, yet there was but little interference from the distant motherland. The colonies voted their own taxes, carried on their own Indian wars, and regulated their own suffrage. Suffrage was very much restricted. In Massachusetts and New Haven, in the earlier years, only members of the Congregationalist Church could vote. All the colonies had a property qualification. The majority of the adult men, up to the time of the Revolution, were not voters.

Oppressions.—As the colonies became of more importance, and especially after a very pig-headed and autocratic king, George III, came to the throne in England, the government of the colonies became harsh and arbitrary. Among the several distinct oppressions complained of by the colonists were the following: (1) Trade restrictions; they were compelled to export their chief products in English ships only, to import from England only, and were permitted to manufacture only such things as were not

made in England. (2) Searching of their houses, in attempts to seize goods unlawfully imported. (3) Quartering of troops on them in time of peace. (4) Denial of trial by jury in certain cases. (5) Taxation without representation, by acts of the English Parliament, in which the colonies had no voice. These abuses led to resistance and to preliminary steps towards union.

2. Preliminary Steps Toward Union.—*A. Stamp Act Congress.* In 1765 representatives from nine colonies (seven was the greatest number ever represented before this time in any one gathering) met in New York, and, as loyal English subjects, drew up a "Declaration of Rights and Grievances." This set forth the rights of the colonists to the liberties of Englishmen, especially the right to tax themselves, and petitioned for a repeal of the oppressive trade restrictions. This declaration won the colonists a few friends in Parliament, but secured no whit of the rights they were asking for. Indeed, it was only two years later that the infamous tax was placed on tea which led to the "Boston Tea Party."

B. The First Continental Congress (1774).—Nine years after the Stamp Act Congress, grievances having rapidly multiplied, the First Continental Congress convened in Philadelphia. This time there were twelve colonies represented. Another Declaration of Rights was drawn up, claiming for the colonists the right of making their own laws, subject only to the royal veto. Before adjourning, this Congress arranged for committees in the towns and villages of the land to organize those who favored resistance to England.

*C. The Second Continental Congress (1775–1781).—*The Second Continental Congress, or, as it is also called, the Revolutionary Government, met after war had actually broken out at Lexington and Concord. It was a revolutionary government in the sense that “not a single member had instructions which justified him in aiding to organize



Independence Hall—The Room where the Declaration was Adopted a government.” Yet, in the face of dire necessity, which is the strongest of laws, this Congress proceeded to exercise the great powers of sovereignty; it raised armies and navies, carried on war, issued paper money, borrowed money, sent ambassadors to foreign countries, made treaties, adopted the Declaration of Independence, and proposed the Articles of Confederation to the States. The Declaration of Independence, in lofty and dignified phrase, set

forth the reasons for separation, and declared, "That these United Colonies are, and of right ought to be, Free and Independent States." From this time on we have States, not colonies, to deal with.

3. The Confederation (March 2, 1781–March 4, 1789).—

There are two things to notice in the government under the Articles of Confederation: (1) the government of the individual States on the one hand, and (2) the government of the Union or "Confederation" on the other. Let us look first at the States. Of course the old colonial governments collapsed in 1775; the royal governors were driven out when war began. From 1776 to 1780 eleven States adopted written constitutions. The old charters in Connecticut and Rhode Island, being liberal, answered as State constitutions. Thus we see that when the Fathers came to frame a federal constitution, they found thirteen "sovereign States" at work, each with a complete written constitution of its own and each with the usual three branches of government. This made it easier to frame a constitution, for there were thirteen models. It made it harder to get that constitution adopted, for each State was jealous of the proposed Union.

The Articles of Confederation were discussed in the Continental Congress from time to time. They were finally submitted to the States, which one by one adopted them, the last of the thirteen taking this step in 1781, after four years of hesitation. The two Continental Congresses of Revolutionary fame gave place to the Congress of the Confederation. But this was near the end of the war. The State governments, now feeling their own strength, came to have a contempt for the weakness of the Confederation.

The government under the Articles of Confederation possessed powers that were vague and illusory. There was no President, no Senate, no Supreme Court. The government was a rope of sand. "It was a weak attempt to organize a Government, but it answered so long as the common peril of British subjugation lasted. When that threat was withdrawn by the peace of 1783, the selfishness and jealousies of the States became intense and threatened to snap the feeble bonds that held them in Union. The Congress became the laughingstock of the country, and the best men shunned it. It had contracted debts in the prosecution of the war; and the States neglecting or refusing to pay their quotas, Congress was protested and dishonored, for it had no power to lay and collect taxes. It had made commercial treaties with foreign Powers, and the States refused to allow in their ports the privileges guaranteed by the treaties. Congress was a mimic show, the butt of jealousy and ridicule. Great things were demanded of men who could do nothing." ¹

There was too much State sovereignty. Each State, for instance, made its own tariff laws. New York wanted to protect the wood industry at home, and levied a tariff on firewood coming in from Connecticut. Garden truck from New Jersey likewise paid tariff duty when crossing the line into New York State. A critical period ensued: State was quarreling with State. The States seemed ready to fly at one another at any moment. This condition led John Jay to write to Washington, "I am uneasy and apprehensive, more so than during the war." President Harrison has

¹ Harrison, "This Country of Ours," pp. 7, 8.

summed up the situation in these words: "Some of our statesmen of that time were wise and unselfish, having a dim view of the glory to be revealed; but petty State jealousies, and the childish fear that the Union would oppress the States, well-nigh thwarted its formation. The proposed general government seemed to be regarded as if it were to be foreign in its control and purposes, and the powers asked for it as involving a surrender of the liberties of the people. So that, practically, when the Constitution of the United States was under consideration the question was, What powers will the people of the States consent to withdraw from the States and give to the National Government? The answer was expressed in the Constitution." ¹

Before making the careful and detailed analysis of this Constitution, which its importance justifies, and which is the duty of every loyal American, let us pause long enough to notice the circumstances of its formation and adoption.

4. The Constitution.—A stronger national authority was needed than that furnished by the Confederation. "That stronger authority," to quote Professor Hart, "was furnished by the Federal Constitution of 1787, which was suggested as far back as 1780, strongly advocated by Washington in public and private letters, formally urged by the legislature of Massachusetts in 1785, and definitely proposed by a preliminary convention at Annapolis in 1786."

The Philadelphia Convention (1787).—The men who made up the Constitutional Convention represented the greatest names of that day and generation of intellectual giants.

¹ Harrison, "This Country of Ours," p. 9.

First of all was George Washington, who presided; and there were James Madison, Alexander Hamilton, a young man of 30 years, and Benjamin Franklin, now an old man of 82. Thomas Jefferson and John Adams were both absent as ministers in Europe. Every State was represented but little Rhode Island. The sessions of the convention lasted fifteen weeks, or from May 25 to September 17, 1787.

The Work of the Convention.—These men had before them as a guide the principles of liberty of the unwritten English constitution, the constitutions of the thirteen States, and the Articles of Confederation. Their work was to select the best material in these, where it would fit, and where it would not, to create anew. Their work of selection was better than their work of creation, as later experience proved. But the work accomplished in the face of great odds was so vast that Mr. Gladstone has called the Federal Constitution “the most wonderful work ever struck off at a given time by the brain and purpose of man.”

There were soon put before the convention two plans, which caused a clash between the large and the small States, and a compromise became inevitable, the first of three great compromises. How much power was each State to have in the Union? The first plan gave the little States too little power, since their representation was to depend on their population. The second plan gave them too much power, being much like the old helpless Confederation. Progress was made by adopting the first compromise, the Connecticut plan. This allowed the little States to have the same voice as the big States in one house of Congress, a Senate of two members from every State, each

Senator to have one vote. In the other house States were to be represented according to population.

Further progress was made by a second compromise, sometimes called the three-fifths or slavery compromise. It was very well, evidently, that States should be represented in the Lower House according to their "population" or number of people. But were slaves "people," or mere chattels? Here a division arose between the North and the South. The South did not want the slaves counted when direct taxes were to be levied on the people; but did want them all counted when representatives were to be apportioned. The disagreement was settled by this simple compromise: When counting the population, both for direct taxes and for representation, five slaves were to be counted as equal to three whites.

The third compromise was over the slave trade. It was adjusted by allowing the South the privilege of importing slaves for 20 years, or up to 1808.

The finished Constitution being a work of so much compromise, was sure to have a hard fight before being adopted by the people. It is highly significant that the convention itself was composed of only 55 delegates out of 65 appointed, and that of these 55 present, only 39 signed the Constitution. The names of delegates, and the facts as to their attendance and vote are all shown in the appendix to this chapter (page 50). The steps in placing this Constitution before the people can be chronicled as follows:

(1) The convention submitted the Constitution to the Congress of the United States (Congress of the Confederation), with the recommendation that it should afterwards

be submitted to a "convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature."

(2) Congress transmitted the Constitution, along with the above recommendation, to the legislatures of the several States.

(3) The legislatures of the several States submitted the Constitution to a "convention of delegates chosen in each State by the people thereof."

Ratification of the Constitution.—The work of the Philadelphia convention had been done with strict secrecy. Only alarming rumors of an approaching tyranny and new fetters of oppression leaked out. When the Constitution as a finished whole was submitted to the people, the result was indeed like the breaking of a storm. For a whole year the most intense excitement prevailed. States were alarmed at the new power proposed to be set over them. When the convention had finished its work, it very prudently sent forth with the new Constitution, this conciliatory statement, in a letter signed by the presiding officer, George Washington:

"In all our deliberations on this subject we kept steadily in our view, that which appears to us the greatest interest of every true American; the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the Constitution which we now present, is the result

of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable. That it will meet the full and entire approbation of every State is not perhaps to be expected; but each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others. That it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish."

This view of the Constitution, unhappily, the people at first refused to take. Only after prolonged discussions, and even riots and violence, did nine States ratify the work and thus establish the Constitution.¹ Just how much power was left with the States, and how much was given to the Federal Government, is a question which can be best answered only by a careful comparison of the Federal and State constitutions, a comparison which is made in the following pages. That the people were converted in the end to the Constitution was largely due to "The Federalist." This magnificent series of arguments for the Constitution, issued in pamphlet form while the people were hesitating, is still a vital document in revealing the meaning of constitutional provisions and the necessity of those provisions. Three men have the credit for writing "The Federalist": Hamilton, Madison, and Jay.

¹ For date of ratification of the Constitution by each State, and vote, see Appendix II to this chapter.

Appendix I. The Constitutional Convention

Complete List of Delegates Signing the Constitution, Refusing to Sign, and Refusing to Attend the Convention.

<i>State</i>	<i>Signed</i>	<i>Refused to Sign</i>	<i>Refused to Attend</i>
Conn.	William S. Johnson Roger Sherman	Oliver Ellsworth	
Del.	George Read Gunning Bedford, Jr. John Dickinson Richard Bassett Jacob Broom		
Ga.	William Few Abraham Baldwin	William Pierce William Houston	George Walton Nath'l Pendleton
Md.	James McHenry Dan'l of St. Thomas Jenifer Daniel Carroll	John F. Mercer Luther Martin	
Mass.	Nathaniel Gorham Rufus King	Elbridge Gerry Caleb Strong	Francis Dana
N. H.	John Langdon Nicholas Gilman		John Pickering Benjamin West
N. J.	William Livingston David Brearly William Patterson Jonathan Dayton	Wm. C. Houston	John Neilson Abraham Clarke
N. Y.	Alexander Hamilton	Robert Yates John Lansing	
N. C.	William Blount Richard D. Spaight Hugh Williamson	Alexander Martin William R. Davie	Richard Caswell Willie Jones

<i>State</i>	<i>Signed</i>	<i>Refused to Sign</i>	<i>Refused to Attend</i>
Penn.	Benjamin Franklin Thomas Mifflin Robert Morris George Clymer Thomas Fitzsimons Jared Ingersoll James Wilson Gouverneur Morris		
R. I.	(No appointment)		
S. C.	John Rutledge Charles C. Pinckney Charles Pinckney Pierce Butler		
Va.	George Washington John Blair James Madison	Edmund Randolph George Mason George Wythe James McClurg	Patrick Henry

Appendix II. Ratification of the Constitution

<i>State</i>	<i>Date</i>	<i>Vote</i>	
		<i>For</i>	<i>Against</i>
1. Delaware.	1787, Dec. 7	30	0
2. Pennsylvania.	1787, Dec. 12	46	23
3. New Jersey.	1787, Dec. 18	38	0
4. Georgia.	1788, Jan. 2	26	0
5. Connecticut	1788, Jan. 9	128	40
6. Massachusetts	1788, Feb. 6	187	168
7. Maryland	1788, April 28	61	11
8. So. Carolina	1788, May 23	149	73
9. New Hampshire.	1788, June 21	57	46
10. Virginia.	1788, June 26	89	79
11. New York.	1788, July 26	30	27
12. No. Carolina.	1789, Nov. 21	193	75
13. Rhode Island.	1790, May 29	34	32

QUESTIONS ON THE TEXT

1. Did the Colonists enjoy self-government in their local affairs?
Why was this? What was England's attitude?
2. Give example of local matters regulated in the town meetings.
3. In what way did conflicts with England arise?
4. How many kinds of colonies were there? How many types
of government in these colonies? Explain.
5. What is said about suffrage in the colonies?
6. What five forms did British oppression take?
7. Name three preliminary steps towards union. Give dates.
8. Describe the Stamp Act Congress, its work, and effects.
9. How many colonists were represented in the First Continental
Congress? What was the work of this Congress?
10. Why was the Second Continental Congress revolutionary?
What was its work?
11. Give a full account of the government of the Confederation,
and reasons for its failure.
12. What was the origin of the Constitution?
13. Describe the Convention of 1787; its work.
14. What were the three great compromises of the Constitution?
15. Describe carefully the ratification of the Constitution.
16. Tell what you can about "The Federalist."

QUESTIONS SUGGESTED BY THE TEXT

1. What was the "critical period" in our history? (See Fiske's
"Critical Period.")
2. Why did Rhode Island decide to join the Union, having taken
no part in forming the Constitution?

REFERENCES

- Harrison, "This Country of Ours," pp. 1-16.
Fiske, "Critical Period."
Bryce, "The American Commonwealth," Vol. I, pp. 1-28.
Hart, "Actual Government," Ch. 3.
Thorpe, "A Short Constitutional History of the United States,"
pp. 1-68.

PART III

THE FEDERAL CONSTITUTION OR FRAMEWORK OF GOVERNMENT

CHAPTER V

ANALYSIS OF THE FEDERAL CONSTITUTION

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." United States Constitution, Art. VI.

The Federal System.—The citizen of North Dakota is also a citizen of the United States. He is living under two governments at the same time—under two sets of law-makers, under two sets of executive officers, under two sets of courts. The main outlines of these two systems of governments are found in the two constitutions. In pursuing the study of Part III of this book, upon which we are now entering, the pupil will make a careful, systematized, complete reading of the Federal Constitution. This is foundation work in the study of civics, and gives a grasp of the frame of government. When this work is once well done, the reader is then in a position to enter with profit upon the study of the government at work (Part IV). In a later part of the book (Part V) the pupil

will in like manner study the State Constitution, and compare the two constitutions, side by side, before studying the State government at work.

LESSON 1

Preamble.—Read and repeat the preamble of the constitution. (See Appendix B, page ix.) This serves as the *enacting clause* of the instrument, and states the reasons for the formation of the new government.

Legislative Branch.—Read Article I, Sections I–VII of the constitution. (See Appendix B, pages ix–xii.) Copy and complete the following outline:

1. *House of Representatives.*

I. How composed?

II. Eligibility { Age?
Citizenship?
Inhabitaney?

III. Number of members? * Number at present time? ¹

IV. How apportioned? (14th Am.)

V. By whom elected? When? How vacancies filled?

VI. Qualifications of electors?

VII. House Powers { Legislative { Concurrent?
Exclusive?
Impeachment?
Elective { House officers?
President of U. S.?

2. *Senate.*

I. How composed?

II. Eligibility { Age?
Citizenship?
Inhabitaney?

¹ Questions starred are optional only. They are not answered in the constitution, but can be answered by reference to some good work on the constitution.

2. *Senate (continued).*

III. Term? By whom chosen? When chosen?

IV. How vacancies filled?

V. Presiding Officer	{	Vice President U. S.?
		President pro tempore?
		Chief Justice?

VI. Senate Powers	{	Legislative?	{	Appointments?
		Executive		Treaties?
		Elective		Senate officers?
		Judicial?		Vice President U. S.?

3. *Provisions Common to Both Houses.*

I. Membership and disputed election returns?

II. Ineligibility to certain Federal offices?

III. Business quorum?

IV. Parliamentary rules?

V. Expulsion of member?

VI. Journal?

VII. Prohibition on Adjournment? Time? Place?

VIII. Salary?

IX. Privileges	{	From arrest?
		Of debate?

Read Article I, Sections VIII, IX, and X; and answer the following questions:

QUESTIONS

1. Name ten powers of Congress.
2. Name seven prohibitions on Congress.
3. Name four prohibitions on the States.
4. May Congress levy a tariff on exports? What is the reason for your answer?
5. May States levy a protective tariff?
6. What are the financial powers of Congress?
7. * Which has the more powers, Congress or the various State legislatures?

LESSON 2

Executive Branch.—Read Article II and Amendment XII. Copy and complete the following outline:

Executive.

- I. In whom vested?
- II. Term?
- III. Qualifications { Age?
Citizenship?
Inhabitancy?
- IV. How elected? (See Am. 12.)
- V. How removable?
- VI. Salary?
- VII. Powers { Military?
Treaty-making?
Pardoning?
Appointing?
Legislative { Message?
Veto?
Convene Congress?

QUESTIONS

1. What does the Federal Constitution say about the President's cabinet? * Can you name the cabinet?
2. Are members of the President's cabinet appointed or elected?
* What effect does this have on the President's position?

LESSON 3

Judicial Branch.—Read Article III. Copy and complete the following outline of the Federal judiciary:

- I. Where vested { Supreme Court?
Inferior courts (* names)?
- II. Judges { How appointed?
Tenure of office?
- III. Jurisdiction { Original?
Appellate?

LESSON 4

The States and Territories; Miscellaneous Provisions; Ratification.—Read Articles IV, VI, VII.

QUESTIONS

1. What credit is given in one State to the judicial proceedings of any other State?
2. * Give one example of this rule.
3. How are new States admitted to the Union?
4. What powers has Congress over the Territories?
5. May the Federal government send troops into a State to quell local disorders? * Has this ever been done?
6. What is the supreme law of the land?
7. May a Mohammedan or Buddhist hold Federal office in the United States? Reason for your answer?
8. What provision is made in the constitution for its ratification? * When was it ratified by each State?
9. * Was this provision in any way revolutionary? (See Articles of Confederation, Art. 13.)

LESSON 5

Amendments.—Read Article V, and Amendments I–XV. Copy the following table, and answer the questions below:

Amendments to U. S. Constitution—Dates of:

Ams. I–X.	Proposed by Congress	1789,	Adopted	1791.
Am. XI.	“ “ “	1794,	“	1798.
Am. XII.	“ “ “	1803,	“	1804.
Am. XIII.	“ “ “	1865,	“	1865.
Am. XIV.	“ “ “	1866,	“	1868.
Am. XV.	“ “ “	1869,	“	1870.

QUESTIONS

1. In what two ways may amendments be proposed to the Federal Constitution?
2. In what way may the Federal Constitution be amended?

3. How have all the amendments thus far been proposed?
4. * What is the object in having the second method of proposing amendments?
5. Give the date of adoption of each of the fifteen amendments to the Federal Constitution.
6. * What led to the first ten amendments? The last three? The 11th? The 12th?
7. * The first ten amendments are often called a "Bill of Rights." Which of the rights there secured are enumerated in Magna Charta of 1215?
8. Where does the word "slavery" occur in the Federal Constitution? What is here said on that subject?
9. Who are citizens of the United States?
10. * Is a Chinaman, born and reared in the United States, a citizen?
11. What are States forbidden to do by the 14th Amendment? Is this an important prohibition? Why?
12. What is there in the 14th Amendment designed to deprive certain southern whites (just after the Civil War) of the right to vote? (Sec. 3.)
13. What is there in the 14th Amendment which aimed to stimulate the southern States to allow negroes to vote? (Sec. 2.)
14. Does Congress, or the States, have the right to regulate the qualifications for voting?
15. Does the 15th Amendment give the negro the right to vote?
16. * In what ways may States "deny or abridge" the right to vote? In what ways have they done so?

REFERENCES

- "The Federalist," Nos. 15-20, 21-30, 85.
Cooley, "Principles of Constitutional Law."
McClain, "A Selection of Cases on Constitutional Law."
Bryce, "American Commonwealth," Vol. I, Chs. 4, 26-35.
Hart, "Actual Government," Chs. 3, 6.
Dillon, Marshall, "Complete Constitutional Decisions."
Johnston, "History of American Politics."
Wilson, "Division and Reunion," Chs. 1, 2, 12, 13.
Tiedeman, "Unwritten Constitution of the United States."

PART IV

THE FEDERAL GOVERNMENT IN ACTION

CHAPTER VI

THE EXECUTIVE: THE PRESIDENT

“Of all systems of government, the most difficult to establish and render effective, the one which evidently requires the greatest maturity of reason, of morality, of civilization in the society to which it is applied, is the federative system of the United States.” GUIZOT.

Introductory.—We have examined the framework or skeleton of our government. It is now time to look at this government at work in its three departments. First, let us look at it from the standpoint of numbers. There are comparatively few men in the legislative branch of the Federal government, fewer than 500, and they are engaged but a small part of the time in actual lawmaking. Of course they make laws under which all departments must work. Interpreting and applying these laws we find a judicial branch of still fewer men, little more than 100, but giving all their time to the work. But when we turn to the executive branch, we find over 300,000 men (including army, navy, and civil service) constituting the great machinery of administration and law enforcement. Yet from the standpoint of importance these three departments are strictly

coördinate in dignity and power, no one being above another, and each in its own constitutional sphere being a check upon the others.

If we would see our government at work, we naturally turn first to the executive branch, which touches our lives daily at many points; directly, on the one hand, by the letters and papers brought to our door through the postal service, by the money in our purse coined and issued through the treasury department, by the report of yesterday's weather and a forecast of the weather of to-morrow, made possible by the weather bureau, and in many other ways; indirectly, on the other hand, by the protection against foreign foes afforded by our forts and battleships, by our army and navy.

"The executive power," says the Constitution, "shall be vested in a President of the United States of America." His powers and duties are summed up in these simple words: "He shall take care that the laws be faithfully executed." To enable the President to carry out his high duty, provision is made for the appointment of a large number of subordinate executive officers. Bryce has told us that four fifths of the President's work "is the same in kind as that which devolves upon the chairman of a commercial company, or the manager of a railway, the work of choosing good subordinates, seeing that they attend to their business, and taking a sound practical view of such administrative questions as require his decision." His chief assistants are the nine Cabinet officers: the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Attorney-General, the Postmaster-General, the Secretary of

the Navy, the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce and Labor; under them some 185,000 subordinates, not including the army, 70,000 men, and the navy, 40,000 men. The President's Cabinet is responsible to him, and not to Congress. Indeed, his position of power and of influence gives him more authority, if less dignity, than has the King of England.

Let us now examine the office of President, and follow this with a brief study of the subordinate executive departments.

Nomination of the President.—How shall we select, out of some 20,000,000 men, that one, particular man who is wise enough and good enough and great enough to be President? Our method to-day is far from perfect. It is not the method of the Fathers; nor is it, in all probability, the method that our children will use after us. The one strictly new thing in the Constitution was the manner of choosing the President. There was to be no popular election of President, the common people being deemed unqualified to pass upon the merits of a man for so great and exalted a position. It might cause too much excitement over the country. There was to be no presidential candidate's name before the people. Each State was simply to select a certain number of prominent men, and these men, or Electors, as they were called, were to do the voting for President. The number of these Electors in each State was equal to the number of the Senators and Representatives from that State in Congress. The Electors in each State were to hold a meeting, and each Elector to cast a ballot

for two persons, not specifying which was his choice for President and which for Vice President. The person receiving the greatest number of votes, if that number was greater than half the number of Electors from all the States, was to be President; and the person receiving the next highest number of votes was to be Vice President.

The plan looked very good. It worked in the first election, because every Elector gave Washington one vote. In the fourth election (1800) we see the breakdown of this system. The 138 Electors voted as follows:

Jefferson	73
Burr	73
John Adams	65
Ch. C. Pinckney	64
Jay	1

Consequently no one was elected. The election of President accordingly went to the House of Representatives, where the voting, in accordance with the provisions of the Constitution, was done by States. On the 36th ballot Jefferson received the vote of 10 States; Burr, 4. This election led to the adoption of the Twelfth Amendment, which introduced the present system of election, described in that amendment and on pages 64, 65.

But the question was still unsettled, How nominate the candidate? Up to 1824, a caucus of each party was held by members of Congress to recommend a candidate for their party. These caucus nominations were usually taken up by the country. But the congressional caucus plan failed in the election of 1824, when, for the second and last time, the election of President was thrown to the House of Rep-

representatives. The Electoral vote for President in that year was:

Jackson	95
J. Q. Adams	84
Crawford	41
Clay	37

No one had a majority, although Jackson stood highest on the list. The House elected Adams. After this there grew up the custom of nominating by a great national convention of each party. The usual number of delegates is two for each congressional district and four at large from each State, making about a thousand delegates. Usually many names of prominent candidates are placed before this convention, names of men that have been discussed in the press of the country for weeks or months before. Hence it is probably true that the convention reflects fairly well the public sentiment of the party. "At Chicago in 1896, Mr. Bryan, who had already been selected by a large fraction of the Democratic party as their candidate, came forward and made a speech which at once stamped him as a leader and greatly aided him to get the nomination" (Hart). The nomination of Lincoln in 1860, and the nomination of Bryan in 1896 and again in 1908, were events of the most spectacular and demonstrative nature. The choosing of delegates to the national convention is done by a State convention, the discussion of which must be deferred to our treatment of State nominations and elections in a later chapter. When the national convention has nominated its candidate for the presidency, and adopted the party platform, its work is done forever. The next step is the campaign, and then follows the election.

Election of President.—After a hot “campaign” of three or four months, the November election occurs. The question may well be asked, Is the President elected in November or in January? The people vote in November; the presidential Electors in January, balloting separately for President and Vice President as provided in the Twelfth Amendment. If we should read the Constitution carefully, and stop at that, we should say, in January. But the “unwritten constitution,” i. e., our settled custom, has made it November.

The question resolves itself into this: Is the President elected by the people, or by the electoral college? The “electoral college” means, of course, the presidential Electors, provided for in the Twelfth Amendment, and chosen by the people in November. The people do not vote for the President. Yet they elect him, paradoxical as this may seem. The Constitution intended that the electoral college should both nominate and elect, in one act, the President of the United States, and should individually use their independent judgment in doing it. Now the national convention nominates the presidential candidate; his name is placed on the November ballot at the head of the list of Electors; and in no case, since 1796, has an Elector cast his ballot in opposition to the expectation of the party that chose him Elector. Hence it is clear that the people in voting for these Electors in reality choose a President, and the Elector has become a mere wooden counter.

Some Results of the Electoral College.—Nor is this all. A man may be, and often has been, elected President by a minority of popular votes. Thus in 1876 Hayes, the

successful candidate, received only 4,033,708 votes as against 4,285,992 given for Tilden. In 1888 the popular vote was, for Harrison, 5,440,216; for Cleveland, 5,538,233; Cleveland's plurality, 98,017: yet Harrison was elected, the electoral vote being 233 to 168 in his favor.

In 1884 New York had 36 electoral votes. In the election that year the Republican candidate received 549,450 popular votes; the Democratic 550,550, or a popular plurality of 1,100. This, of course, turned the whole 36 electoral votes to the Democrats, and the 549,450 Republican voters of the state were "silent" as far as influencing the choice of President was concerned. Each State votes as a unit—the minority, however large, not being represented, because each voter in the State has a vote for the entire list of Electors.¹ Thus in 1908 the voter in New York voted for 39 Electors; in North Dakota for 4; in Wyoming for 3. A minority of one third, or even less, may elect a President under this system. This defect of "unit" voting could be cured by allowing each voter to vote for but one, or at most two, Electors, i. e., one from his own congressional district, and one "at large."

Qualifications, Term, Salary.—The qualifications of the President have been clearly named by the Constitution and cannot be changed by Congress. He must be a native American, at least 35 years old, and must have resided at least 14 years within the United States. No religious test can

¹ "It is an odd result of the system that the bestowal of the suffrage on the negroes has operated against the Republican party which bestowed it. The Southern States have in respect of this increase in their voting population received 37 additional presidential votes, and these have in the last two elections (1880 and 1884) been all thrown for the Democratic candidate." Bryce, "American Commonwealth," Vol. I, p. 41, note.

be required of him. He must take this oath before entering upon the duties of office:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States and will to the best of my ability preserve, protect and defend the Constitution of the United States." The term is four years; nine Presidents have been reelected. No President has ever been elected to a third term, and the country is now apparently set against a third term. The salary is determined by Congress, but cannot be increased or decreased to any President during the period for which he is elected; any change must take effect in the succeeding administration. The salary was set in 1790 at \$25,000 a year, an enormous sum for that day. In 1871 it was made \$50,000. In 1909 it was made \$75,000, a sum much below that paid by many business corporations to their presidents.

Presidential Succession.—The Vice President assumes the office of President in case of the death or disability of the President. Should the Vice President also die, the succession would then be as follows: (1) Secretary of State; (2) Secretary of the Treasury; (3) Secretary of War; (4) Attorney-General; (5) Postmaster-General; (6) Secretary of the Navy; and (7) Secretary of the Interior.

Powers and Duties.—In Washington the President lives in the White House, which Hart describes as "a stately building beautifully situated on a rise which sweeps down to the Potomac flats, with superb drawing rooms used for the entertainment of visitors. . . ." The social life here is rather strenuous. "Large numbers of people," continues Hart, "including whole visiting societies or their delega-

tions, go to pay their respects at the White House. Members of the Cabinet have the entrée of the President's office at all times, and many Senators and members of the House have an equally undisturbed privilege of access for themselves and their constituents and friends. Indeed, Presidents sometimes find it hard to get to their meals because



The White House

of the pressure of callers.”¹ President Harrison speaks of the daily life of the President in these interesting words: “The mail that comes daily to the Executive Mansion is very large; in the early months of an administration it is enormous, as many as eight hundred letters being sometimes received in a single day. But few of these letters reach the President’s desk. The mail is sorted by a trusted

¹ Hart, “Actual Government,” pp. 267, 268. .

and confidential clerk; family and personal letters are sent unopened to the persons to whom they are addressed; letters relating to appointments are, as a rule, acknowledged by one of the clerks, and referred to the proper Department; and only those that relate to the more important appointments and to matters of public interest are sent to the President's desk. . . . Letters can be turned over to clerks, but callers are not to be so disposed of. Unless the President is very early, he will find some callers waiting for him as he passes through the Cabinet room to his offices. . . . His time is so broken into bits that he is often driven to late night work, or to set up a desk in his bedroom, when preparing a message or other paper requiring unbroken attention. . . . The grounds of the Executive Mansion are now practically a public park; for, though enclosed by high iron fences, the gates stand open, save that the gates to the grounds south of the house are closed and locked at night. The driveway in front is a thoroughfare, and the walks are used as freely as the sidewalks of the city. Until screens were placed in the windows of the private dining-room, it was not an unusual incident for a carriage to stop in front of them while the occupants took a gratified view of the President and his family at their breakfast or lunch. . . . There is not a square foot of ground, not a bench nor shade tree, that the President or his family can use in privacy."¹

We may say that the constitutional requirement, "He shall take care that the laws be faithfully executed," sums up, in a general way, the official duties of the President. However, on a closer examination, we find that he is en-

¹ Harrison, "This Country of Ours," Ch. 10.

dowed with five distinct powers and corresponding duties, which may be considered under the following heads: (1) Military power; (2) Treaty-making power; (3) Pardoning power; (4) Appointing power; (5) Legislative power.

1. Military Power.—Congress declares war. The President cannot declare war. But he is the commander in chief of the army and navy of the United States, and also of the militia of the several States when called into actual service of the United States. The President, in case of war, does not, of course, take actual command in the field, but directs the war in a general way, as did Lincoln, by instructing commanders to make certain campaigns, by suggesting important movements, and by displacing poor officers and appointing better ones in their place.

2. Treaty-Making Power.—Neither Congress nor the President can make treaties. The treaty-making power is given to the President in connection with the Senate. The initiative and the negotiations with a foreign power leading up to the treaty are in the President's hands alone. The proposed treaty then goes before the Senate, and if two thirds of the Senators present concur, the treaty is ratified when the President signs it. If less than two thirds concur, the President has no right to sign it, and the proposed treaty is rejected. A treaty is part of the supreme law of the land, and hence the power to make treaties is expressly forbidden to the States.

3. Pardoning Power.—"And he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." Since the appointees of the President, and even the President himself,

are liable to impeachment, it would not be wise to give him the pardoning power in such cases. A *reprieve* is a temporary postponement of the execution of a sentence. The President has power to change or "commute" a sentence, as well as to pardon. He may commute a death sentence to a term of imprisonment, for instance.

4. Appointing Power.—The appointing power, like the treaty-making power, is shared by the Senate. "He shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." Since the appointing power extends to all commissioned officers in the army and navy, all Federal judges, and to many thousands of civil officials, including 60,000 postmasters, the appointment of a large number of subordinate officials has been given to the heads of departments.

Senatorial Courtesy.—The President sends his nominations for appointments to the Senate. The Senate then meets in "executive session," that is, secret session, to consider the names sent in. The appointment is ratified by a majority vote of the Senators present; but usually, through the "courtesy of the Senate," the candidate for the office within any State must be satisfactory to the Senators from that State, if of the majority party. The President

must comply with this unwritten rule of "senatorial courtesy" or have his appointment rejected in the secret session. This really gives the bulk of presidential appointments to the Senate. It leaves to the President his own Cabinet appointments and a few foreign offices. Beyond that the lion's share of national patronage goes to the Senate.

The Spoils System and the Civil Service.—The national civil service includes all appointed Federal officials excepting those in the military and naval service and the judiciary. Congressmen are not civil officers. Along with the President's power to appoint goes the power of removal of those in the civil service, a power which is absolute in his hands, not requiring the consent of the Senate. Military and naval officers are removed by court-martial; judges, only by impeachment. About the time of President Jackson the power of removal of civil officers began to be shamefully abused. The so-called "spoils system" was introduced, whereby persons were turned out of office or placed in office on purely partisan grounds without regard to questions of real merit or fitness. Little was done to remedy this evil till a disappointed office seeker had assassinated President Garfield. This was a fearful price to pay for the Civil Service Law of 1883, which was the beginning of a better day. This law established a Civil Service Commission and a Classified Civil Service. Persons secure office on the classified civil service list only after passing an examination. These examinations are widely advertised, are held at convenient places, and are open to the public. At first but few civil service positions were placed on the classified list. By orders of the Presidents this list has been extended from

time to time until it now includes clerical positions of many kinds, and even consuls. No appointments requiring the ratification of the Senate (except consuls) come under the classified civil service.

The chief virtue of the competitive examination system of appointment is that it substitutes a merit system for a spoils system; its chief defect is that it fences in as well as fences out some undesirables.

5. Legislative Power.—In theory we have a separation of powers of government, but in practice this separation is not complete. The President does have some voice in lawmaking, in spite of the fact that "all legislative powers," according to the Constitution, are to be "vested in a Congress." The President can exert a vast influence over legislation by his right to convene Congress in special sessions, to send messages to Congress, and to veto bills passed by Congress.

The annual message of the President to Congress is an important statement of the work of the executive branch and other branches, finished and unfinished, with recommendations to Congress as to a needed program of legislation. Rarely, however, does Congress attempt to carry out any but the most pressing of the measures taken up in the message. During the session the President often sends a special message to Congress dealing with matters of immediate importance. Thus McKinley, on the eve of the outbreak of war with Spain in 1898, sent in a special message asking for money for the army and navy. Within two hours the House of Representatives had passed the appropriation bill.

The veto power gives the President opportunity to express his objections to a bill in writing, and is the most important control over legislation exercised by him. Thus it was because of the veto power that President Taft was able to secure certain provisions in the important Payne Tariff bill of 1909. When the House bill passed the Senate, after amendment, it was understood that the amended bill, if repassed by the House, would be vetoed by the President, and that it could not pass over his veto by the two thirds majority required by the Constitution. To escape this veto, the bill was left to a conference committee of both houses, changes were made acceptable to the President, and as thus finally amended, the bill was duly passed and signed. Very rarely has Congress succeeded in passing a bill over the President's veto, although the attempt has often been made.

If the President neither vetoes nor signs a bill within ten days, it becomes a law anyway, if Congress is still in session. If Congress meanwhile has adjourned, he may sign the bill within the ten days and thus make it a law, or he may lay it aside unsigned without giving any reasons, thus defeating it. This method of killing a bill by neglect is called the "Pocket Veto." Some state executives have the power of pocket veto, but in North Dakota it is forbidden by the State constitution.

Impeachment.—If the President is thought to abuse his powers, he can be "impeached," i. e., accused, by the House of Representatives. Thus the House impeached President Andrew Johnson. The Senate sits as a court to try the impeachment charges, the Chief Justice of the Supreme Court presiding. President Johnson was fortunately

acquitted of the many charges against him, and thus a subordination of the President to Congress was avoided.

Vice President.—The term and qualifications of the Vice President were of course made the same as those of the President, since the Vice President may be called to the higher office at any time. His salary is \$12,000 per year. His chief duty is to preside over the Senate. He has no vote, except in case of a tie. The Senate elects for itself a president pro tempore, who is one of its own members, and who presides in the absence of the Vice President. As the Senate also elects the members of its standing committees, instead of having them appointed by the presiding officer, it is evident that the duties of the Vice President are very light.

QUESTIONS ON THE TEXT

1. How many men are employed in each of the three branches of our Federal government?
2. Which branch is nearest the daily lives of the citizens?
3. What kind of man is needed for the presidency?
4. In what way did the Constitution prepare for the nomination of President?
5. How did the plan work?
6. What is the present method? How does it work?
7. How can a minority now elect the President?
8. What two Presidents were elected by the House of Representatives? Why was this?
9. How is the President elected? When?
10. Criticize carefully the electoral college. How could it be improved?
11. Give the qualifications, term, and salary of the President.
12. What is the order of presidential succession?
13. What are the general duties of the President?
14. What are the five constitutional powers and duties of the President?

15. What is senatorial courtesy? The spoils system?
16. What is the civil service? What are the virtues and the weaknesses of civil service reform and the classified civil service?
17. Explain impeachment, and the manner of trial of an impeachment of the President.
18. What are the qualifications and duties of the Vice President?

QUESTIONS SUGGESTED BY THE TEXT

1. Give the electoral and popular vote for President in 1888 in each State.
2. Give an account of Hayes's election. Was it legal?
3. What are the advantages and disadvantages of an Electoral College?

REFERENCES

- Bryce, "American Commonwealth," Vol. I, Chs. 5-8.
Harrison, "This Country of Ours," Chs. 4-10.
Hart, "Actual Government," Chs. 15, 16.
Wilson, "The State," pp. 542-550.
Cooley, "Principles of Constitutional Law," pp. 103-110.
McClain, "Constitutional Law in the United States," pp. 197-218.
Stanwood, "A History of Presidential Elections," Chs. 1, 2, 5, 6, 11, 24.

CHAPTER VII

THE EXECUTIVE (CONTINUED): THE DEPARTMENTS

"He (the President) may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices.

"Congress may by law vest the appointment of such inferior officers, as they think proper . . . in the heads of departments." Constitution, Art. II, sec. II.

The Cabinet.—Only twice does the Constitution refer to the Cabinet, and then in the somewhat ambiguous words quoted above. Beginning in 1789 with three departments,—State, Treasury, and War,—Congress has increased the list from time to time, till at present we have nine departments.¹ Other departments will doubtless be added later; the question of a department of health, for example, is now being agitated.

The word "Cabinet" is adopted from the name of the body of public ministers who possess the executive authority of the English government. These ministers are chosen from the party possessing a majority in the House of Commons, and they have seats in Parliament and participate in its debates and proceedings. In fact the British Cabinet frames the important bills and is held responsible

¹ Dates of organization of departments:

State, 1789; Treasury, 1789; War, 1789; Post Office, 1794; Navy, 1798; Interior, 1849; Department of Justice, 1870; Agriculture, 1889; Commerce and Labor, 1903.

for them by the people of the land. The British Cabinet must therefore stand or fall solely by the success of their own bills. And since a new election can be held at any time, whenever needed, the British Cabinet has become very representative of the people, so that Great Britain has, in spirit, a republican form of government.

In the United States, however, Cabinet members cannot be members of Congress: they can take part in legislation only indirectly—by their regular published reports, by interviews with chairmen of congressional committees, etc. This reduces their influence on legislation almost to nothing. They are the President's advisers. He is not bound to take or to follow their advice; he may remove Cabinet members at pleasure. Pierce, the weakest President, is said to have put important questions to a vote of his Cabinet and to have followed the majority. Lincoln would sometimes announce his decision in advance to his Cabinet and then ask for their discussion, not their approval.

Students of our government have often debated the probable benefits of giving the Cabinet members seats in Congress, where they might influence legislation more directly.

Appointment, Removal, Salary.—The President has power to appoint his Cabinet members, with the consent of the Senate. His power of removal is absolute. President Roosevelt made many changes in his Cabinet. The salary of a Cabinet member is fixed by Congress at \$12,000 a year.

1. State.—The Secretary of State ranks first in the Cabinet. Ex-President Harrison described the office force of the secretary as consisting of "three assistant secretaries, one chief clerk, six chiefs of bureaus, one translator, one

private secretary to the Secretary, fifty-seven clerks of the various classes, three despatch agents—one at London, one at New York, and one at San Francisco—and four messengers.” Among the great Americans who have served as Secretary of State are Jefferson, Madison, Monroe, John Quincy Adams, Daniel Webster, and John Hay. Much depends upon the common sense and tact of the Secretary of State, since all correspondence with foreign governments is conducted by him under the direction of the President. In a time of crisis he may even save his country from war. The first name of this department was “the Department of Foreign Affairs.”

Diplomatic Service.—To carry on our official, or diplomatic, intercourse with foreign sovereigns and governments, we employ ministers or diplomatic agents. There are four grades of these, ranking as follows: (1) Ambassadors; (2) Ministers Plenipotentiary; (3) Ministers Resident; and (4) Chargés d’Affaires. The principal duties of these ministers, aside from their exacting social functions, are the negotiation of treaties, the adjustment of claims and disputes between the two governments, and the reporting to the Secretary of State of significant political happenings. One criticism of the American diplomatic service is that the salary is so small (\$17,500 or less) that the diplomat, especially in large capitals like London, Paris, and Berlin, cannot live on it or even pay his rent with it, but must draw on his private fortune. In other words, only a rich man can accept and hold the appointment. Foreign governments pay higher salaries and in addition furnish houses for their ambassadors.

Consular Service.—The business side of our foreign establishment is called the Consular Service. There are some fifteen hundred persons in this service, now chosen under civil service examinations, and located at all important commercial cities and towns of the world. The consul's duties are to act as guardian of American commerce, keep a record of the arrival and departure of American ships and their cargoes, report any new inventions and improvements in manufacturing, commerce, and agriculture, and render protection and assistance to Americans in distress, especially American sailors. Consuls are ranked as (1) consuls general at capital cities, (2) consuls, (3) vice consuls, and (4) consular agents, a kind of deputy for a consul. The salary is low, ranging from \$1,000 to \$12,000. Professor Hart tells us that "consuls have a variety of social functions not set forth in their instructions: they are expected to invite distinguished visiting Americans to dinner; to lend money to the American whose draft has not come; to recommend lodgings, and to quarrel with the proprietors if the tenants are dissatisfied. A former consul at Geneva declares that he was called upon to tell where real American chewing tobacco could be obtained, to forbid the French government to examine a lady's trunk at the frontier, and to decide how 'bombshell' should be pronounced."¹

The criticisms of our consular service are, that the salary is too low, that the consul is thus forced to live in a style without such dignity as to command the respect of the foreign population about him, and that often the consul cannot speak the language of the country where he re-

¹ Hart, "Actual Government," p. 439.

sides. But in recent years there are many signs of improvement.

2. Treasury.—The Treasury Department is the collecting and disbursing agency of the government. It has sometimes been called the “steam-plant” from which all other departments get their power, since without revenue all operations of government would soon cease. The Secretary of the Treasury is second in dignity only to the Secretary of State. Hamilton, the first Secretary of the Treasury, was able, by his luminous and masterly reports to Congress, to shape legislation on financial subjects, notably the creation of a mint, the adoption of a national coinage system, the restoration of public credit, and the establishment of the first tariff system. While Congress holds the purse strings, yet the Secretary of the Treasury annually submits to Congress a “budget,” or estimate of receipts and expenses for the coming year, and a record of the receipts and expenses of the past year. This gives Congress a good working basis in making appropriations. It must be confessed, however, that too little regard is paid to this estimate of the Secretary of the Treasury. Seldom do the appropriations of Congress fit the income provided for by Congress. In case of a shortage, or *deficit*, as it is called, the Secretary of the Treasury is often forced to borrow.

In addition to acting as bookkeeper and custodian of the funds of the government, the Secretary of the Treasury is charged with the very heavy duties of coining all gold, silver, and other coins issued, and of supervising the seven thousand national banks and issuing to them the paper money which they use. His influence over the money of

the country and over the banking system is very great indeed, affecting Wall Street itself, for good or for ill, according to the wisdom of the secretary. This subject is one which cannot be adequately discussed here, but will be treated in a later chapter, on "Public Finance, Money, and Banking," page 139.

3. War.—Compared with foreign countries, the United States has a very small army, the limit being 100,000 enlisted men. The actual number is now about 70,000 men. The Secretary of War supervises the organization, equipment, and general movements of the army. Our many years of unbroken peace with other great powers, and our wide separation from the warlike powers of Europe and Asia, make it a difficult matter to maintain the army in a state of full preparation for instant war. After the Spanish-American War, the army was divided into two separate branches—the general staff and the line. The staff consists of forty-five officers from the army, whose duty is to prepare plans of defense, investigate and study the efficiency of the army, coördinate and unify the work of the different departments, especially the feeding of the army, the furnishing of transportation, ordnance, clothing, medicine, intelligence, etc. This is as necessary as fighting, indeed, makes fighting possible. The line is the fighting part of the army. In this branch our army, in proportion to its numbers, is equal to any in the world. The grades of officers are major general, brigadier general, colonel, lieutenant colonel, major, captain, first lieutenant, and second lieutenant. The pay runs from \$13,500 a year down to \$1,400 for a second lieutenant.

A Military Academy is provided at West Point for the training of officers. Most of the cadets are appointed by members of Congress, upon competitive examination; they receive \$540 a year. Upon graduation they are commissioned as second lieutenants. It is possible, although difficult, to secure a commission in the army as second lieuten-



Monument at West Point

ant, without first taking the West Point course of training. Grant, Sherman, Lee, and most of the other great commanders in the Civil War were graduates of West Point.

4. Justice.—The work of the Department of Justice is “very large, very responsible, and very various.” The United States is a party to much litigation, both civil and

criminal. Much evidence must be collected and presented. Suits against great industrial corporations must be prosecuted with energy, skill, and persistence. This work devolves upon the Attorney-General, in charge of this department, and upon his assistants. It is a work of great importance to the country. The Attorney-General must also give advice, when asked, to the President and to other members of the Cabinet, on legal points that arise; and he must supervise the work and activities of the Federal marshals and district attorneys throughout the United States. As there are about ninety Federal district courts in the United States, each having its own judge, attorney, and marshal, this work of general supervision is a work of great magnitude, as well as of very vital concern to the nation (see chapter on Federal Judiciary, page 128). In law enforcement, the President must rely to a great extent on his Attorney-General.

5. Post Office.—There is only one large business in this country under government ownership and operation, and that is the business of the Post Office. The transportation of mail matter is a government monopoly. Congress has made it a punishable offense for any private person or company to carry mail matter by stated trips over any mail route or between any places where the mail is regularly carried, unless such mail is inclosed in stamped envelopes. There are more than 120,000 men under the Post Office Department, and about 60,000 post offices. The annual expenses are more than \$200,000,000, and the receipts a few million below this figure. In the year 1908, for instance, the expenditures were \$208,351,886, and the receipts

\$191,478,663, leaving a deficit of \$16,873,223 for Congress to make up.

John Wanamaker, when Postmaster-General, expressed the true aim of the postal service in these words: "I want to keep the mail bag open to the latest possible minute, then get it to its destination in the shortest possible time, and then get each separate piece of mail to the person for whom it is meant in the quickest possible way." The Post Office Department is organized to carry out this aim: it is now rendering "not a perfect service, but a high-class service." There are some counties in the United States in which the mail is delivered to every family every day. It is in the rural free delivery of mail that we see the greatest growth of the postal service in recent years.

Organization of the Department.—The Post Office Department is in the charge of the Postmaster-General and four Assistant Postmasters-General.

Post offices are divided into four classes, according to the amount of business done. About 55,000 post offices are of the fourth class; this means that receipts of the business done in each of these offices is less than \$1,000 a year. As soon as a post office grows to the \$1,000 mark, it is promoted to the third class, and the postmaster's salary advances accordingly. The most important post offices are of the first and second classes. There were, in July, 1907, in North Dakota, 800 post offices, classified as follows: first class, 2; second class, 6; third class, 88; fourth class, 704. On January 1, 1909, the numbers were, first class, 2; second class, 15; third class, 101; fourth class, 915, total, 1,033.

There are only about 5,000 post offices in the United

States in the first, second, and third classes. The President appoints all first, second, and third-class postmasters, with the "consent of the Senate." This means, in reality, that the Senators from a State, if of the dominant party, name their postmasters. Fourth-class postmasters are left to the Postmaster-General, and the duty of appointing them has been assigned to the First Assistant Postmaster-General. The President has recently (1909), by executive order, put on a civil-service basis the fourth-class postmasters east of the Mississippi river and north of the Ohio river, as an experiment. The 15,000 postal clerks in the railway mail service are selected strictly by the Civil Service Commission, and they are reëxamined at frequent intervals to keep their efficiency up to standard.

Mail matter is classified into four classes. Letters are first class, and must pay two cents an ounce postage. This more than pays the cost of the service. Second-class matter includes newspapers and periodicals; the rate is one cent a pound if the matter is sent out by the publishers (one cent for four ounces if sent by others). This involves a loss to the government each year, since the bulk of all mail matter is of this class, and pays this cheap rate. The third class comprises books and other printed matter; the rate is one cent for two ounces. The fourth class includes merchandise, and the rate is one cent an ounce.

Free Delivery.—In cities the post office sends a letter carrier to each house for the daily delivery of mail. One carrier in this way can serve 400 families a day. In the country districts, in many parts of the nation, a system of rural free delivery is now in successful operation. The

system is rapidly spreading to the more thinly settled portions. Like the handling of second-class mail matter, this system costs the government more than it brings in. However, there is now no longer any question as to its value to the country. With the growth of the rural free delivery system, the number of small post offices has rapidly decreased. In 1900 there were 76,688 post offices in the United States; in 1908 there were 61,158, a decrease of 15,530 in eight years.

Sending Money by Mail.—The post office transfers money by mail in two ways: (1) For a fee of ten cents in addition to regular postage, the post office “registers” a letter containing money, and guarantees the safe delivery of it up to a limit of \$50. (2) Or, for a small charge, the post office sells postal “money orders,” payable to a given person only, which can be sent in ordinary letters and cashed at the receiving office.

Telegraph.—In many European countries the telegraph is a part of the postal system, the service being both cheap and efficient. In 1866 Congress passed a law authorizing the purchase and taking over of our telegraph system by the Post Office Department. As yet, however, little progress has been made towards that end.

6. Navy.—“If you wish peace, prepare for war,” was a sentiment expressed by George Washington. The United States is pursuing the policy of building a powerful navy, and aims to approach, if not equal, the standards of Great Britain, France, and Germany. The Secretary of the Navy has general charge of the construction, equipment, and employment of the navy. Like the army, the navy is divided

into the staff and the line; and appointments to commissions in the navy are made by the President.

A Naval Academy was founded at Annapolis in 1845 for the training of officers. Midshipmen spend four years at the academy and two years at sea. As at West Point, nomination of midshipmen is made mostly by members of Congress, sometimes after a competitive examination.



The Battleship North Dakota

7. Interior.—The Department of the Interior is noted for the many different matters left to its care. President Harrison described it in these words: “The Interior Department is now, in the variety and importance of the business committed to it, one of the greatest of the executive departments. Perhaps no one of the secretaries, unless it be the Secretary of the Treasury, is so pressed and cumbered with business as the Secretary of the Interior. His work is not single, as is most of the departments, but diverse and multifarious; and only a strong and versatile man can conduct it successfully. The Secretary must pass finally

in the department upon questions of patent law, pension law, land law, mining law, the construction of Indian treaties, and many other questions calling for legal knowledge, if the judgment of the Secretary is to be of any value.”¹ A partial list of subjects coming under the charge of this department is as follows: Public lands, Indian affairs, Pensions, Patents, Bureau of Education, Geological Survey.

Public Lands.—A discussion of the public lands involves a brief description of the survey and the disposition of the public domain for the purpose of homesteads, subsidies to railroads, etc., and must be deferred to a later chapter on “The Nation and the States,” page 157.

Pensions.—There are now about 1,000,000 names on the pension roll, and the annual sum paid out in pensions, increasing for many years, is now nearly stationary, aggregating about \$140,000,000. This is the largest single item of expense in the Federal government. There has been much criticism, and also much praise, of the Pension Bureau. “There are two views of the pension question,” says President Harrison, “one from the ‘Little Round Top’ at Gettysburg, looking out over a field sown thickly with the dead, and around upon bloody, blackened, and maimed men cheering the shot-torn banner of their country; the other from an office desk on a busy street, or from an endowed chair in a university, looking only upon a statistical table.”

A general law now provides a pension for all who were ever in the Union armies in the Civil War. In addition to this Congress annually passes thousands of private pension

¹ Harrison, “This Country of Ours,” p. 269.

bills, usually in the nature of increases of pension to those coming under the general law. The expense of this practice, though great, is not criticized so much as the loss of valuable time by congressmen who have great public questions to settle.

Indians.—The Commissioner of Indian Affairs has very important and very delicate duties to perform. No more treaties are made with Indian tribes—as was done in the early days of the Republic—but they are now treated either as wards, or, if their tribe is broken up, as ordinary citizens of the United States. There were, in 1908, 300,000 Indians in this country, one third of them living in Oklahoma, in the part formerly known as “Indian Territory.” The government schools at Hampton, Carlisle, and Lawrence (Haskell Institute), and elsewhere, have done a great deal in educating the head and hand of the Indian child. Still, the pupils show a tendency to return to the old Indian life. In twenty years the government has spent \$45,000,000 in this work of education, yet not more than one Indian in six is able to read. The remaining Indian reservations will in time be abolished, the tribes disintegrated, and the Indian will take his place as a citizen on the same level as the white man.

Patents.—Congress has power, according to the Constitution, “to promote the progress of science and the useful arts” by granting to inventors a private monopoly of their inventions for a limited term. Patents for a term of seventeen years are granted to those who prove they have invented or discovered any new and useful art, machine, manufacture, or any new and useful improvement thereof.

not before patented, or described in any publication, and not in public use or on sale for more than two years.

Education.—The United States has no university or system of schools—the maintenance of such institutions being left wholly to the States. There is, however, a United States Commissioner of Education, having no authority to direct or supervise, but only to investigate, inform, and suggest. His work is very important and stimulating to the schools, and does much to promote the cause of education in this country. The bulky volumes making up the report of this commissioner are the work of experts, and are much sought after by those who manage our educational systems.

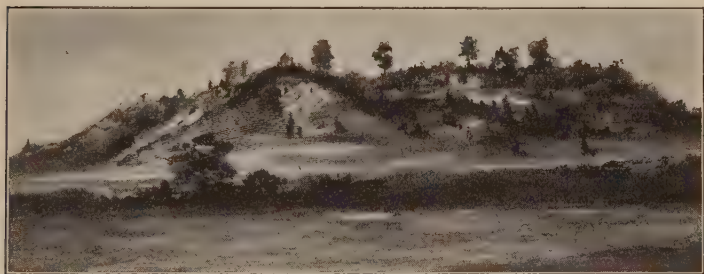
Geological Survey.—The director of the Geological Survey has charge of a work of both scientific and practical value. The mineral resources of the public lands are examined; likewise the possibilities of “waste lands” for irrigation and reclamation.

8. Agriculture.—Agriculture at last is being put on a scientific basis, largely through the work done by the Department of Agriculture at Washington. Some of the largest laboratories of the world are to be found here, where investigators study plant and animal diseases, soil fertilizers, methods of exterminating noxious plants and insects, and many other things that are of interest to the farmer. Seeds are tested, and “rare and valuable” seeds are sent free to farmers for making experiments with new varieties of plants. In addition to such important and useful work, this department has charge of the following four matters:

A. Weather Bureau.—For the benefit primarily, of farmers and mariners, the Weather Bureau distributes in-

formation daily throughout the land concerning the temperature, rainfall, and barometer of yesterday, and publishes also a forecast of the weather for to-day and to-morrow. This bureau also displays storm signals at one hundred and fifty stations on the seacoast. The work has proved of great value.

B. Forestry.—The government has now set aside 170,000,000 acres in mountainous parts of the country as Forest Reserves, or "National Forests," as they are called.



Undeveloped National Forest in the Bad Lands

Forestry is a young science, in this country; so young, in fact, that our forests have already been almost entirely cut down, and in large measure wasted, and the damage done before forestry has had a chance to teach a better policy. The Forest Service, made famous by Gifford Pinchot while he held the position of forester, keeps in the field a force of rangers or patrols to prevent forest fires; a force of supervisors to manage the national forests by selling dead and down timber, planting new trees, and keeping the range in good condition; and in other ways serves the settlers and general public. *To keep the water-flow steady, especially*

near irrigated districts, is a work of vast benefit to the country at large, which the Forest Service is aiming to accomplish through the national forests. The United States will in time, it is hoped, be known as a country where forests are cultivated and cared for, even as other crops are cultivated and cared for.

C. Good Roads.—The Department of Agriculture sends out pictures, books, and men, all over the United States, to teach the people the need of good roads and how to build good roads. Where the people show themselves sufficiently interested, men are sent to the spot and a model road is actually built. All this is done at the expense of the Federal government, although the construction of roads has long been left to the States to manage or mismanage, as they see fit. Under the spur of this help from the Federal government, the good roads movement is spreading through every community.

D. Pure Food.—Since the passage of the Pure Food and Drug Act, June 30, 1906, the work of the Department of Agriculture in this field has become widely known. Live animals are inspected at every packing house; the meat of the slaughtered animal is also inspected and stamped by United States inspectors. Chemists investigate such questions as these: the use of benzoate of soda in preserving vegetables; the use of bleached flour as food; the use of flavoring or coloring matter in canned goods. They examine foods and drugs entering into interstate commerce (that is, crossing State lines) to see if they are adulterated contrary to law, and to see if packages of food are correctly labeled as to contents and weight, as required by law.

Information of the Public.—The Department of Agriculture publishes annually and distributes freely a Year Book of Agriculture, full of useful information; it also issues bulletins from time to time, covering every possible subject of interest to farmers, from the question of killing dandelions to that of the protection of sheep from wolves. Good roads literature is also issued freely, and with good results. Likewise the field of forestry is represented by many printed bulletins, freely distributed. Two of these bulletins are to be noted and commended, namely, one on "The Use of the National Forests," and another entitled "A Primer of Forestry."

9. Department of Commerce and Labor.—In President Roosevelt's annual message to Congress in 1902, he used this language: "Corporations, and especially combinations of corporations, should be managed under public regulation. Experience has shown that under our system of government the necessary supervision cannot be obtained by State action. It must therefore be achieved by national action. . . . Publicity can do no harm to the honest corporation; and we need not be overtender about sparing the dishonest corporation. . . . I believe that monopolies, unjust discriminations, which prevent or cripple competition, fraudulent over-capitalization and other evils in trust organizations and practices which injuriously affect interstate trade, can be prevented under the power of Congress. . . ."

Congress accordingly, in February, 1903, created the Department of Commerce and Labor. This department, through its Bureau of Corporations, has already investigated and made public the methods of the Beef Trust, the

Standard Oil Company, and the Tobacco Trust. The bureau has also investigated the following: steel industry, International Harvester Company, lumber industry, cotton exchanges, and water transportation. This bureau investigates, but does not bring suits against corporations. The Department of Justice must conduct the trial of cases of this kind. The Bureau of Corporations has aided the Department of Justice in the preparation for trial of several of these cases. In the fifth report of this bureau (1908), the following significant conclusions are stated:

"There is an irresistible movement towards concentration in business. We must definitely recognize this as an inevitable economic law. We must also recognize the fact that industrial concentration is already largely accomplished, in spite of general statutory prohibition. Recognizing these facts, the aim of new legislation should be to regulate, rather than to prohibit, combination. It is an obvious absurdity to attempt to do both at the same time, and prohibition has practically failed. . . . If we are to do anything effective with the corporation question, we must make an advance on our present legislation. The practical object is to see that business opportunity and the highways of commerce are kept equally open to all; to prevent fraud, special privilege, and unfair competition. To do this we must recognize concentration, supervise it, and regulate it. . . . Above all, we must have a system of efficient publicity. This is the strongest means for our purpose."

The Department of Commerce and Labor also includes various other bureaus, among them these four:

The Bureau of Labor, created in 1884: its chief work is

the collection and publication of statistics concerning wages, cost of living, labor disputes, and so on.

The Bureau of Manufactures, designed to aid manufacturing interests by collecting and publishing useful information.

The Bureau of Fisheries, which publishes information of value in the fishing industry, and also propagates millions of young fish for distribution to the streams and lakes of the country.

The Census Bureau, which gets out the census every ten years, and issues many special bulletins in the intervening time. This bureau now contains a permanent body of trained specialists, a thing which was not true up to the year 1902.

Separate Commissions and Officers.—In addition to the nine departments described above, there are two important executive commissions: the Civil Service Commission, and the Interstate Commerce Commission. The Civil Service Commission has already been spoken of, under the President's appointing power. The Interstate Commerce Commission was created in 1887 to enforce the laws of the United States for the control of railroads operating in more than one State, and especially to put a stop to unfair discrimination in freight rates. While it has never prevented pooling, that is, combinations among railroads, it has given much needed publicity to railway management, and thus paved the way for better and wiser laws.

There are also two important special officers not under the control of any of the nine Cabinet departments. The Librarian of Congress has charge of the Congressional



The Congressional Library

Library, and the Public Printer has charge of the Government Printing Office, which is the greatest printing office in the world.

QUESTIONS ON THE TEXT

1. What is the difference between the American and the British Cabinet?
2. What does our Constitution say about the President's Cabinet?
3. Name the nine departments. Give methods of appointment and removal of the department heads; name salary.
4. Describe in full the work of the Department of State.
5. What great men have served in this department?
6. Compare the diplomatic and the consular services, giving a full account of each. What criticism of the consular service?
7. What are the duties of the Secretary of the Treasury? What is the "budget"?
8. What are the duties of the Secretary of War? What are the two divisions of the army?
9. What is the nature and the purpose of the school at West Point?

10. What is the work of the Department of Justice? Why so important?
11. Describe the business of the Post Office. Give statistics showing its magnitude.
12. Describe the organization of this department; classification of post offices and of mail matter; free delivery system; sending money by mail.
13. Describe organization and control of the navy; nature and purpose of the school at Annapolis.
14. Why should we have a large navy?
15. Name six subjects coming under the Interior Department. Explain and criticize each.
16. What is the government doing to make agriculture a science?
17. What four allied subjects come under this department? Describe each. How can the public get information on these subjects?
18. What is the youngest department? Why was it formed? What has it done?
19. What is recommended concerning the regulation of corporations?
20. Name four other bureaus under this department; tell the purpose of each.
21. How does the Federal government regulate railroads?
22. Name two special executive officers.

QUESTIONS SUGGESTED BY THE TEXT

1. Describe the telegraph system of England.
 2. Debate the question of government ownership of the telegraph in the United States.
 3. Should second-class mail matter be carried at the present low rate of postage?
 4. Compare our navy (in number of ships, guns, men) with those of England, Germany, and France.
 5. Draw a map of the United States and on it locate the present Indian reservations.
 6. What work in forestry has the Federal government done in North Dakota? Describe one national forest in this State.
- Govt. No. Dak.—7

7. Compare the pure food work of the Federal government with that of North Dakota.
8. What States now have State highway commissions?
9. Give an account of the "conservation" policy of President Roosevelt.
10. Name the present Cabinet officers.

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CHAPTER VIII

THE SENATE

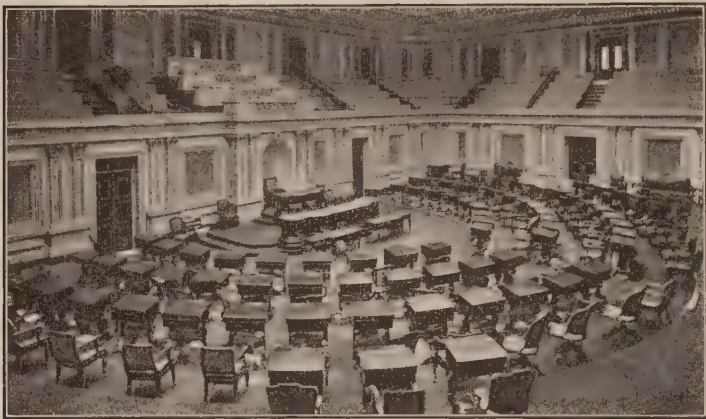
"The Senate is just what the mode of its election and the conditions of public life in this country make it. Its members are chosen from the ranks of active politicians, in accordance with a law of natural selection to which the State legislatures are commonly obedient; and it is probable that it contains, consequently, the best men that our system calls into politics. If these best men are not good, it is because our system of government fails to attract better men by its prizes, not because the country affords or could afford no finer material. The Senate is, in fact, of course, nothing more than a part, though a considerable part, of the public service; and if the general conditions of that service be such as to starve statesmen and foster demagogues, the Senate itself will be full of the latter kind, simply because there are no others available. There cannot be a separate breed of public men reared especially for the Senate. It must be recruited from the lower branches of the representative system, of which it is only the topmost part. No stream can be purer than its sources. The Senate can have in it no better men than the best men of the House of Representatives; and if the House of Representatives attracts to itself inferior talent, the Senate must put up with the same sort. Thus the Senate, though it may not be as good as could be wished, is as good as it can be under the circumstances." WILSON, "Congressional Government," pp. 194, 195.

"The Senate now contains many men of great wealth. Some, an increasing number, are Senators because they are rich; a few are rich because they are Senators, while in the remaining cases the same talents which have won success in law or commerce have brought their possessor to the top in politics also. . . . It is a company of shrewd and vigorous men who have fought their way to the front by the ordinary methods of American politics, and on many of whom the battle has left its stains." BRYCE, "American Commonwealth," Vol. I, pp. 116, 117.

Composition of the Senate.—The Constitution provides that "All legislative powers herein granted shall be

vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The Senate, or "Upper House," as it is termed, is made up of two members from each State, elected, not by the people of the State, but by the State legislature. Thus the Senate represents the States in Congress, while the House of Representatives directly represents the people of the nation.



Senate Chamber

Election of Senators by State legislatures has not proved entirely satisfactory, as the framers of the Constitution fondly imagined it would. The method is hard to change. Proposed amendments to the Constitution, changing this method, have never yet passed the Senate, although they have passed the House. However, some States—including North Dakota—have really found a way around the Federal Constitution, by providing a State primary election law (to be explained later), which allows the people to vote for

their choice for Senator. The person thus voted for by a majority of voters is considered duly nominated, and his election by the State legislature then follows as a matter of course.

A Senator must be thirty years of age, nine years a citizen, and a resident of the State which he represents. His salary is \$7,500 a year; a mileage fee of 20 cents a mile, both ways; and an allowance of \$125 a year for stationery. The term of office is six years.

The Senate is a body of dignity and stability. This stability is given to it by its permanence; only one third of the Senators are elected every two years. Since the term of office is six years, the majority of the Senators at any time have seen over two years of service. When a wave of popular excitement sweeps over the country, as in 1890, it takes but a single election to change a Republican House into a Democratic House, or *vice versa*; but it would take two elections, two years apart, to change a Republican Senate into a Democratic Senate, or a Democratic Senate into a Republican Senate. This is one of the eight "check and balance" schemes provided for in the Constitution.¹

Work of the Senate.—The Senate is, of course, primarily a legislative body. But, since absolute separation of powers is unattainable, we may discern four separate functions of the Senate, namely, (1) legislative, (2) executive, (3) judicial, and (4) elective.

(1) The Senate shares equally with the House the right of introducing and passing bills, save only that revenue bills must originate in the House. However, since the Senate

¹ Cooley, "Principles of Constitutional Law," Ch. VII.

may amend such bills at pleasure, this distinction amounts to very little.

(2) The Senate exercises, with the President, two executive functions. It gives or refuses its assent to proposed treaties, and ratifies or rejects appointments to Federal office sent in by the President. This gives the Senate a certain prestige and standing which the House does not enjoy. When a new President takes office March 4, it is customary for him to call the Senate together at once in order that his new appointments to office may be properly confirmed.

(3) The Senate sits as a court of impeachment for the trial of charges brought by the House against any officer of the United States. When the President of the United States is on trial before it, the Chief Justice of the Supreme Court presides in place of the Vice President, who is at ordinary sittings president of the Senate. The Senate is the judge of the election returns and qualifications of its own members. Thus in the famous case of Reed Smoot of Utah, discussed widely in the newspapers of the time on account of his relations with the Mormon church, the Senate made a thoroughgoing investigation and pronounced him entitled to his seat in the Senate. The Senate may also, upon a two-thirds vote, expel a member.

(4) If the Electoral college fails to elect a Vice President, this duty devolves upon the Senate. Once only has this happened—in 1837, when Richard M. Johnson was chosen Vice President by the Senate.

Senate Committees.—To understand the work of the Senate we must understand the Senate committees. How

are they chosen? Not, as in the House, by the presiding officer. They are chosen by the Senate itself. That is, the members of the dominant party hold a secret caucus and arrange the list of committee appointments. This list then goes before the Senate in regular session, is voted on, and, of course, is elected. In 1888 there were forty-one standing Senate committees: in 1908 there were fifty-five committees varying in size from three to seventeen members; each Senator usually serves on four or five committees. The most important committee of the Senate is the Finance committee. The places on this committee are given only to the older members. In 1908 Senator Aldrich, who had represented Rhode Island in the Senate for over twenty-five years, was the chairman, and the following eleven other States had each a member: Michigan, New York, North Dakota, Pennsylvania, Maine, Illinois, Virginia, Colorado, Mississippi, Texas, and Florida.

In 1909 the Senate created a new standing committee, known as the Public Expenditures committee. It consists of seven men—the seven chairmen of the seven Senate committees to some one of which is submitted every bill providing for revenue or carrying an appropriation. Heretofore there had been too little coöperation between the spending committees and the revenue committees, a very bad business policy indeed for any country. This new committee aims to effect a better coördination and coöperation between revenue and appropriation committees.

Every bill introduced in the Senate goes before a standing committee for consideration and report. Herein lies the power of the committee in legislation—a power which

is discussed under the "Committee System of Congress" on page 121.

Influence of the Senate.—The chief work and influence of the Senate in lawmaking we must consider in the discussion of Congress in a following chapter. However, it may be said that the influence of this august body is greater at the close of a hundred years of history than it was at the beginning, especially in matters pertaining to revenue and taxation. And it is in the Senate that all the great debates are given. This is partly due to the fact that here the hall is smaller and better to speak in than is the hall of Representatives, and partly to the fact that here the men are older and more seasoned. The Senate has not found it necessary to limit debate, while the House frequently shortens speeches or prohibits them altogether by its special rules.

QUESTIONS ON THE TEXT

1. What do the great critics, Wilson and Bryce, say of the Senate?
2. How are Senators chosen?
3. State qualifications, term, and salary of a Senator.
4. What gives the Senate dignity and stability?
5. What four functions has the Senate?
6. What power has the Senate over revenue bills?
7. Give examples of executive and judicial work of the Senate.
8. Explain the formation and work of Senate committees.

QUESTIONS SUGGESTED BY THE TEXT

1. Should Senators be elected by popular vote? Why?
2. Why is the Senate called the "Upper" House?
3. Name the Senators from North Dakota. How long have they served in the Senate? On what committees? (See Congressional Directory).

4. What bills were introduced by the North Dakota Senators in the last session of Congress? (See Index to Congressional Record.)
5. What is the "check and balance" theory? Name eight checks and balances.

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CHAPTER IX

THE HOUSE OF REPRESENTATIVES

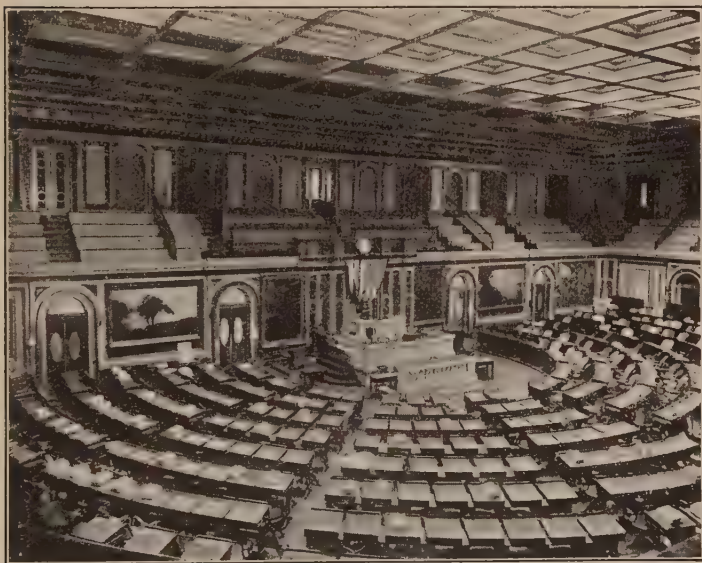
"There is something impressive about it [The House of Representatives], something not unworthy of the continent for which it legislates. This huge gray hall, filled with perpetual clamor, this multitude of keen and eager faces, this ceaseless coming and going of many feet, this irreverent public watching from the galleries and forcing its way to the floor, all speak to the beholder's mind of the mighty democracy, destined in another century to form one-half of civilized mankind, whose affairs are here debated. If the men are not great, the interests and the issues are vast and fateful. . . . Of what tremendous struggles may not this hall become the theatre in ages yet far distant, when the parliaments of Europe have shrunk to insignificance?" BRYCE, "American Commonwealth," Vol. I, p. 149.

Composition of the House.—The House of Representatives, now numbering about four hundred men,¹ is made up of Representatives chosen directly by the people of the States. In some States women may vote for Representatives, in others only men; this is a question left for the States to settle for themselves. Each organized Territory (and Alaska) is entitled to send one Delegate, who may speak, but cannot vote in the House. States that have population enough are divided into two or more "Congressional districts," the average district including about 200,000 inhabitants. Each State is entitled to at least one representative, no matter how small the State. Thus Nevada, with its population of 42,000, has one Representative, the same

¹ In the 61st Congress, (1909-1911) the House had 395 members, including four delegates from Arizona, Alaska, Hawaii, New Mexico.

as Utah, with a population of 277,000. After the decennial census is taken, Congress makes a new apportionment of Representatives, so that a State may increase the number of its congressional districts if its population shows a sufficient increase.

The Representatives are chosen in November in most



Hall of the House of Representatives

of the States—and take their seats in the following odd-numbered year. The term of office is two years. The salary is the same as that of a Senator; the Speaker's salary is \$12,000 a year. A Representative must be twenty-five years of age, and seven years a resident of the United States. He must reside in the State he represents, and, according to custom, in the district electing him.

The short term—two years—makes the House a change-ful body. A serious criticism of the House is that the successful candidate must make his campaign and be elected thirteen months before he takes his seat. Thus the issues he fought for may become stale before he has a chance to take his seat in Congress. For instance, the members elected in November, 1906, took their seats in December, 1907, in the first session of the 60th Congress. If, however, the President calls together a special session of Congress, the members may take their seats as early as March.

The House at Work.—Among the powers peculiar to the House are three: the sole power of impeachment; the sole power of introducing bills for raising revenue; and the power of choosing the Speaker. This last power is the one which is most significant of all. The House also elects its other officers, and adopts its own rules.

The House, like the Senate, is the judge of the election returns of its own members and of their qualifications.

The Speaker.—Bryce describes the power of the Speaker as "power which in the hands of a capable and ambitious man becomes so far-reaching that it is no exaggeration to call him the second, if not the first, political figure in the United States, with an influence upon the fortunes of men and the course of domestic events superior, in ordinary times, to the President's, although shorter in its duration and less patent to the world."¹

The Speaker appoints the standing committees of the House; he presides over the House. These are his two duties, and they look innocent enough. And yet in the exer-

¹ Bryce, "American Commonwealth," Vol. I, p. 136.

cise of these two powers, ambitious Speakers, like Reed and Cannon, have been denounced the nation over as "Czar" and "Autocrat." The whole country has at times been aroused to a high pitch of excitement over the alleged arbitrary actions of the Speaker.

The Speaker now has the custom of sitting with a little memorandum before him—a list of names of those whom he will recognize during the day as having a right to the floor. The list is made up, somewhat arbitrarily, by the Speaker in his office. The Speaker may ask, and frequently does ask a member why he rises on the floor. If the member's purpose does not suit the Speaker, he merely replies, "The member is not recognized for that purpose." Every bill introduced in the House is referred by the Speaker to the appropriate committee, appropriate, that is, in the judgment of the Speaker.

The power of the Speaker is one of the peculiar and debatable features in our form of government. Has he too much power? Would it be possible for such a large House to do any business at all if the Speaker had less power? Congressmen have sometimes complained that the real powers of the House have been merged in the Speakership; that he is indeed the House.

Both Speaker Cannon and Speaker Reed have defended the power of the Speaker. Speaker Cannon writes as follows:

"The Speaker is the servant of the House. The Speaker is elected by a majority of the members, and he can be deposed and another man elected any hour of any day that he fails to fulfill the duties of the office as the majority would

have them fulfilled. . . . There is no rule or combination of rules in the House that can stifle the will of the majority. The rules have been developed through many years to the end that the minority shall be protected in every right, but that a loud, determined, and belligerent minority shall not be able to overturn the will of the majority. . . . The real trouble in Congress is the great volume of business laid before it at every session, much of it clearly out of place there. No body of men can consider 40,000 bills in the present life of a Congress. It is physically impossible; and yet there is an increase rather than a diminution in the number of bills introduced year after year. The members feel compelled to introduce every bill offered by their constituents, and these bills burden the committees and fill the calendar to the embarrassment of the really important legislation.”¹

The Committee System of the House.—The House had, in 1908, sixty-six standing committees. The most important committee is that of Ways and Means, since here bills for raising revenue, such as new tariff measures, income tax laws, and the like, must originate. Nineteen States were represented on this committee in 1908. All bills introduced in either house of Congress go to the appropriate committees for detailed consideration. It is in the committee that nearly every bill “dies,” and this must be so, owing to the overwhelming number of bills introduced. Thus in the five months of the first session of the 60th Congress (Dec., 1907, to May, 1908), 22,000 bills were introduced in the House.

¹ “The Power of the Speaker,” by Joseph G. Cannon, *Century*, Vol. 78, p. 306, June, 1909.

The Committee on Rules.—So many committees at work on so many thousands of bills gives rise to the need of yet another committee, namely, the Committee on Rules. This committee has control of the daily business or program of the House. It can prescribe by rule when a measure shall be in order; how it shall be voted upon, with or without amendment or debate. The House elects this committee.

The committee system of the House must be examined in connection with that of the Senate, and it is discussed therefore in the following chapter on Congress. In that chapter will be given the criticisms of our marvelously developed, modern committee system.

QUESTIONS ON THE TEXT

1. How is the House of Representatives made up?
2. Explain the term "congressional district."
3. What is the salary of the Speaker of the House?
4. How soon does a newly-elected Representative take his seat in the House?
5. How are contested elections to the House judged?
6. Name three powers peculiar to the House.
7. What does Bryce say of the Speaker's power?
8. What are the Speaker's duties? In practice, how does he perform them?
9. Name the advantages and disadvantages of the present great powers of the Speaker.
10. What is the Committee on Rules? Explain its functions.
11. Can the Speaker control the majority? The minority?
12. What is Cannon's criticism of the work of Congress?
13. Which is the most important committee of the House? Why?

QUESTIONS SUGGESTED BY THE TEXT

1. What is the present membership of the House of Representatives? Name the members from North Dakota. On what committees do they serve?

2. Are women qualified to become members of the House?
3. Who is the Speaker of the House? Name the members of the Committee of Ways and Means. (See "Congressional Directory.")
4. Debate: Resolved, that the protection of the majority justifies the present rules of Congress investing the Speaker with great power.
5. Give a list of all the committees of the House at present. (See "Congressional Directory.")
6. Explain the "Committee on Rules," and illustrate its workings.

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CHAPTER X

CONGRESS

"Next to the Speaker, the most powerful influence in Congress is the committee system, which is strongly intrenched in both the Senate and the House. . . . The committees are a sifting machinery, without which both houses would be simply buried under bills. The result, however, lacks unity; the Speaker appoints the committees but he cannot remove members because they do not follow his advice; the committees act independently of each other and often oppose each other. . . . The committee system, with all its drawbacks, disposes of and kills off many undesirable measures. The gradual establishment of the power and responsibility of the Speaker, and the unwritten influence of the steering committee, make the House still a legislative body; and the House and Senate are kept in reasonable adjustment with each other. Congress is a more efficient body than almost any State legislature, is less subject to personal influences, and is less controlled by a few political leaders acting for personal ends. The main trouble in Congress is lack of time, and that is due partly to private-bill legislation, and partly to the pressure on the time of members to obtain office for constituents and supporters." HART, "Actual Government," pp. 233, 236, 257.

Long and Short Sessions.—The term of a Representative is two years, and the life of a Congress is therefore two years. Thus the 61st Congress lasts from March 4, 1909, to March 4, 1911. Each Congress has two regular sittings or sessions, as they are called, the long session and the short session. Each session begins on the first Monday in December. Since the second session must end on March 4, it is the short session. The first session commonly lasts till May or June, and, indeed, sometimes till July or later.

The Powers of Congress.—Some powers of Congress are clearly stated or expressed in the Constitution; others are only suggested or implied. Hence it is that Congress has two distinct classes of powers—express and implied. The extent of the implied powers is a matter for the highest courts to determine. The rule now followed by Congress, when it comes to legislate on a subject not mentioned in the Constitution (like a national bank, for instance) is this one, stated so clearly in 1819 by Chief Justice John Marshall of the Supreme Court of the United States: “We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. *Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consistent with the letter and spirit of the Constitution, are constitutional.*”

The express powers of Congress have been already enumerated in Chapter V, and it will not be necessary to enumerate them again here. We may classify the powers of Congress as follows: Taxing power, Commercial powers, Territorial powers, Miscellaneous powers.

Taxing Power.—“The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general

welfare of the United States." This is the greatest power possessed by Congress. The power to tax is the power to destroy. On one occasion Congress has used this power to destroy; namely, in the case of the note issues of State banks outstanding in 1863. They were wiped out of existence by a 10% tax. Congress may and does use this taxing power to *regulate business*, as well as to raise revenue. Thus the high tax on whisky discourages the consumption of that drink and also brings in much revenue. However, the taxing power should always be used primarily for the one purpose—the raising of revenue. It must be used for a *public* purpose.

Commercial Powers.—The now famous "commerce clause" of the Constitution gives Congress, and Congress alone, power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Congress cannot, of course, regulate commerce that is wholly within one State; to come under the control of Congress, commerce must cross State lines, that is, be interstate. But the bulk of commerce to-day is interstate. The carrying of persons, goods, or messages comes under the head of commerce. This clause therefore puts the "regulation" of most railroads, express companies, and telegraph lines under the control of Congress. Laws requiring air brakes and safety couplers on freight cars are examples of the exercise of this power of Congress. So are the laws prohibiting rebates on railroads. How far does this power of Congress extend? This is a question for the Supreme Court to settle. Briefly, we may put the question this way: Is the business "commerce," and is it "interstate"? then Con-

gress may regulate it. If it is not both, then the State alone can regulate it. Interstate life insurance business, for instance, is not commerce, and hence Congress cannot regulate it. The Interstate Commerce Commission (1887) and the Bureau of Corporations (1903) have been created by Congress to assist in the increasing work of "regulating" interstate commerce. The growing magnitude of the business to be regulated, and the insubordinate attitude of some of the more powerful corporations, make this duty of Congress one of the most difficult of all to perform properly.

Territorial Powers.—"New States may be admitted by the Congress into this Union; . . . The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property, belonging to the United States."

With the exception of the original thirteen States, Congress, under the provisions of this section of the Constitution, admitted all the present States into the Union, upon such terms and conditions as it saw fit to impose. Excepting Vermont, Kentucky, Maine, West Virginia, Texas, and California, these new States were admitted only after each had passed through the preliminary stage of being an "organized Territory" or part of one.¹ An organized Territory has a legislature chosen by the people, but an executive and judges appointed by the President of the United States. Usually Congress has passed an act "enabling" the people of such a Territory to draw up a constitution, and provid-

¹ Vermont, Kentucky, Maine, and West Virginia were once parts of New York, Virginia, Massachusetts, and Virginia, respectively. Texas was an independent republic. California was part of the public domain not yet organized as a Territory.

ing for its admission when certain conditions had been complied with; but some Territories were admitted under constitutions they had framed without previous authority.

The District of Columbia is governed under laws which are passed by Congress, and in which the people of the District have no voice. They do, however, pay a small tax. Congress provides for a commission, appointed by the President, to administer the government of the District.

Since 1898 the United States has owned certain colonies or "Dependencies" as they are also called, such as the Philippines, Porto Rico, Guam, and Tutuila. Hawaii was annexed at the same time, by a joint resolution of Congress, and has been made into an organized Territory, as part of the United States. It has the usual territorial delegate in Congress, with power to speak but not to vote. The colonies are under the form of government which Congress sees fit to extend to them. The Philippines were for a time turned over to the President to govern as he "saw fit"; but now they have been given a government something like that of a Territory. The United States Constitution does not apply to these new possessions, except as Congress so extends it. So it has been held by our Supreme Court, after some serious questions arose concerning this point. The government of colonies—something not contemplated in the original Constitution—brings new and difficult problems for Congress to solve. Special mention must be made of the Canal Zone.

Panama Canal Zone.—When Congress decided to construct a ship canal across the Isthmus of Panama, negotiations were at once begun with Colombia to secure control of

a strip of land stretching along the canal route. A proposed treaty to this effect was rejected by the Congress of Colombia. The Department of Panama at once revolted and set up a successful, independent government. A canal treaty between this new Panama Republic and the United States was ratified by our country in February, 1904. We paid a large sum in gold, guaranteed the independence of Panama, and secured "perpetual control" of the strip of land ten miles wide across the Isthmus. Congress passes laws for the government of this Canal Zone. For greater efficiency, Congress has placed in the President's hands the power of appointing the Canal Commissioners, and these men administer the local government. The work of these commissioners comprises not only civil government, but grave problems in engineering and sanitation. The construction of the Panama Canal is one of the great undertakings of modern times.

Miscellaneous Powers.—Within the last few years we have heard much about the "conservation of our national resources" by Congress, pure-food laws, laws protecting laboring men on railroads, employers' liability laws, and many other general welfare measures. This is a field of legislation, partly within the express powers of Congress, but largely merging into the field of implied powers as defined by Marshall. The tendency seems very marked to centralize power more and more in the hands of Congress, and remove it from the States.

Prohibitions on Congress.—When we do not find the power, expressed or implied in the Constitution, the presumption is that Congress does not have the power, but

that it is reserved to the States or to the people. However, the Constitution goes further, and on some points places in plain terms absolute prohibition on Congress. A law passed in the face of such a prohibition is, of course, void. The chief prohibitions are these:

Congress can pass no bill of attainder or *ex post facto* law.¹

Congress can levy no direct tax, except by assigning to each State a lump sum to be paid, *according to the population of the State*. Such an apportionment of direct taxes to-day, when States of the same population differ so greatly in wealth, would be an outrage on justice. Congress, in the past, has levied and so apportioned a direct tax, but five times in all, each time with unsatisfactory results.

A "direct" tax is nowhere defined in the Constitution, but poll taxes and taxes on real estate have always been conceded to be direct taxes, and the Supreme Court has decided that a tax on incomes derived from real or personal property is a direct tax.

Congress cannot levy a tariff duty on exports, nor give any preference to the ports of one State over those of another.

No title of nobility can be granted.

Congress is forbidden to interfere with those fundamental personal rights, dear to the Anglo-Saxon heart, namely, religious liberty, freedom of speech and of the press, right of assembly, right of petition, right to bear arms, right of

¹ A bill of attainder is a legislative act which inflicts punishment without a trial. An *ex post facto* law is one which makes an innocent act, done before the passage of the law, criminal and punishes for such act, or which makes the penalty for a past criminal act greater than that imposed by the law in force when the act was committed.

the home to be free from the quartering of soldiers in it in time of peace and from unreasonable searches and seizures, and right to trial by jury. No person shall be deprived of "life, liberty, or property, without due process of law."

Prohibitions on Congress may sometimes be ignored by the lawmakers of that body. In such a case, the law is promptly tested in the Federal courts by some one suffering therefrom, and such a law is held to be in conflict with the Constitution, and hence null and void. Even a beneficial law of Congress would suffer the same fate, if found to be in conflict with the "supreme law of the land." Thus the Supreme Court, construing the Constitution and hedging in the power of Congress therewith, forms one of the "checks and balances" in our scheme of government.

Process of Lawmaking.—How can an assembly of about 400 men in one house and an assembly of about 90 men in another house, deliberate to the best advantage over the many questions that come before them? How can the real interests of one hundred million people be represented and safeguarded in such a gathering? How, for instance, could the 29,000 bills introduced during the one hundred and thirty days of the first session of the 60th Congress (i. e., 223 bills a day) receive proper attention? The theory of the Constitution was that each bill introduced in either house should receive full discussion there, and, if worthy, should be sent on to the other house for a second scrutiny, that any hidden flaw might be detected and removed. Thus purged of all defects and purified by the white fire of discussion, the successful bill would go to the President for his signature, thus finally becoming a law. But should the

President discover any fault, he should "veto," that is, refuse to sign, and return the bill with his written objections to the house where it originated. Both houses, by a two-thirds vote, could pass the measure over the President's veto. The veto part remains as the Constitution contemplated. But the rest of the process of lawmaking, in practice, has become something unknown to the Constitution. The practice to-day has been named "legislation by committee," and "government by the chairmen of the standing committees of Congress." Lawmaking is, in fact, a matter now in the hands of the Speaker and the committees of Congress.

The Committee System of Congress.—There are some fifty or sixty standing committees in each house, as described on a preceding page, and to some one of these standing committees each and every bill is referred. The life of a standing committee is two years—the same as that of Congress. "Not having been discussed," says Bryce,¹ "much less affirmed in principle, by the House, a bill comes before its committee with no presumption in its favor, but rather as a shivering ghost stands before Minos in the nether world. It is one of many, and for most a sad fate is reserved. The committee may take evidence regarding it, may hear its friends and opponents. They usually do hear the member who has introduced it, since it seldom happens that he has himself a seat on the committee. Members who are interested approach the committee and state their case there, not in the House." He continues, "The committee can amend the bill as they please, and although they

¹ Bryce, "American Commonwealth," Vol. I, pp. 153-160.

cannot formally extinguish it, they can practically do so by reporting adversely, or by delaying to report it till late in the session, or by not reporting it at all. In one or other of these ways nineteen twentieths of the bills introduced meet their death, a death which the majority doubtless deserve, and the prospect of which tends to keep members reckless as regards both the form and the substance of their proposals. A motion may be made in the House that the committee do report forthwith, and the House can of course restore the bill, when reported, to its original form. But these expedients rarely succeed, for few are the measures which excite sufficient interest to induce an impatient and overburdened assembly to take additional work upon its own shoulders or to overrule the decision of a committee."

The committee meetings are usually secret. The public knows very little of what goes on here.

Bryce has summed up the arguments for and against the committee system of Congress.

The Evils of the System.—(1) "It destroys the unity of the House as a legislative body." It is as a committee man that a member does his real work.

(2) "It prevents the capacity of the best members from being brought to bear upon any one piece of legislation, however important." Such legislation may fall to a weak committee.

(3) "It cramps debate." No debate is needed in the House, except on a few measures.

(4) "It lessens the cohesion and harmony of legislation." Each committee acts independently of the others.

(5) "It gives facilities for the exercise of underhand and even corrupt influence. . . . I do not think that corruption, in its grosser forms, is rife at Washington. When it appears, it appears chiefly in the milder form of reciprocal jobbing or, as it is called, 'log-rolling.' But the arrangements of the committee system have produced and sustain the class of professional 'lobbyists,' men, and women too, who make it their business to 'see' members and procure, by persuasion, importunity, or the use of inducements, the passing of bills, public as well as private, which involve gain to their promoters."

(6) "It reduces responsibility." We do not know where to place blame for a bad bill, or praise for a good bill.

(7) "It lowers the interest of the nation in the proceedings of Congress." It throws power—*but not responsibility*—into the hands of the chairmen of the committees.

The Benefits of the System.—(1) "It enables the House to deal with a far greater number of measures and subjects than could otherwise be overtaken, and has the advantage of enabling evidence to be taken by those whose duty it is to re-shape or amend a bill."

(2) "It sets the members of the House to work for which their previous training has fitted them much better than for either legislating or debating 'in the grand style.' " There is more business and less oratory.

(3) "On the whole, it may be said that under this system the House dispatches a vast amount of work and does the negative part of it, the killing off of worthless bills, in a thorough way. Were the committees abolished and no other organization substituted, the work could not be done.

But much of it, including most of the private bills, ought not to come before Congress at all."

It is a poor system, but it is the best we have been able to work out thus far, in a hundred years' experience. It will last till a better system is devised.

Summary of the Process of Lawmaking.—The following are the steps usually followed by a bill in the process of becoming a law. (1) "Introduced," by being presented to the clerk of the house, indorsed with its title, its number, and the name of the member introducing it. (2) First and (3) second readings on different days by the clerk—one reading consisting merely in reading the title of the bill. (4) Referred to a committee by the Speaker (or, in the Senate, by the President of the Senate). (5) Considered in committee, and, if not "killed" there, (6) reported back to the house. (7) Considered, debated, perhaps amended in the house. (8) Third reading. (9) Vote—"Shall the bill pass?" The bill when passed and signed by the presiding officer, (10) goes to the other house and repeats the process just described. When passed by a majority of both houses and (11) signed by the President, a course taking usually weeks or months, it becomes a law. If the second house amends the bill, it must go back to the first house in order that the amendment may be "concurred in," that is, accepted. If the first house refuses, then each house appoints a certain small number of members to meet a set of members from the other house in a "joint conference committee." Here is where most of the longer bills are finally shaped. Thus the great tariff bills—the McKinley bill of 1890, the Dingley bill of 1897, and the Payne bill of 1909,

were put in their final form by the conference committee. It is a committee of great power and little responsibility.

Freedom of Debate.—In the Senate, where more dignity is supposed to enter into the deliberations, freedom of debate is allowed. That is, any member may speak, and he may talk as long as he pleases,—even ten or fifteen hours at a time, as has been done in a few cases. In the House, however, the Speaker may “bottle up” a member, not letting him speak at all. Or the House may pass a motion limiting debate to five-minute speeches or shutting off debate altogether. Both methods are common.

Record.—A complete record is kept of all the proceedings of each house of Congress, and entered upon its journal. Besides, the “Congressional Record” is published each day, for the benefit of the public at large; this is a verbatim report of all business transacted, showing what bills and resolutions have been introduced, by whom, and the debate on them. The votes are also shown, and, in those cases where one fifth of the members present so request, the name and vote of each member is given.

The Output of Legislation.—“Of the 1,881 statutes put on the statute-book from 1899 to 1901,” says Hart, “1,498 are classified in the statutes as ‘private,’ 211 more are appropriations or other bills temporary in their nature, leaving only 172 measures which concern the permanent public service or interest.”¹ In the 50th Congress, lasting four hundred and twelve days, 570 public and 1,257 private acts were passed. In the 59th Congress, lasting three hundred days, 774 public and 6,249 private acts were passed.

¹ Hart, “Actual Government,” p. 256.

Most of the private bills are private pension bills, many of them worthy enough, but hardly fit subjects for Congress to pass upon. They should be adjusted elsewhere. This would leave Congress more time for public business.

The great issues before the lawmakers of Congress involve the difficult questions of our tariff, our finances, our money and banking systems, the regulation of railways and other corporations and combinations of corporations, immigration, colonial problems, the army, the navy, and great international questions in world politics, involving the war and peace of nations. Laws on these and other questions are of course passed by the political party in power. These laws are therefore criticized by the other party, naturally, and should be so criticized. Hence it is difficult to find an independent judgment passed on the actual work of Congress. Foreign critics, however, usually agree that our Congress succeeds in enacting many laws of genuine importance to the welfare of our people.

QUESTIONS ON THE TEXT

1. What, according to Hart, are the two most powerful influences in Congress?
2. Explain fully the terms "long" and "short" session.
3. Classify the powers of Congress. Name ten powers of Congress.
4. Distinguish between implied and express powers. Give an example of each. What is the extent of the implied powers?
5. What is the extent of the taxing power of Congress? In what different ways can it be used? How should it be used?
6. State the commerce clause of the Constitution. Define and illustrate "commerce"; "interstate."
7. What progress has Congress made in regulating commerce?
8. What territorial powers has Congress? What power over the colonies? Give an account of the Panama Canal Zone.

9. Give examples of the exercise of miscellaneous powers by Congress.
10. State and explain the chief prohibitions on Congress.
11. What prohibition on Congress concerning the "life, liberty, or property" of an individual? What is the significance of this provision?
12. What are some of the inherent difficulties in the process of lawmaking? What is the theory of the Constitution as to lawmaking? The process in practice?
13. Describe in full the committee system of Congress.
14. State six evils and three benefits of the committee system.
15. Summarize briefly the steps in lawmaking.
16. Compare freedom of debate in the two houses.
17. Where can we find a report of the proceedings of Congress?
18. Describe the output of legislation.

QUESTIONS SUGGESTED BY THE TEXT

1. Consult a Congressional Directory, and investigate: (a) Number and names of committees in each house in charge of expenditures; (b) Committees in charge of raising revenue.
2. What is the relation of the Secretary of the Treasury to Congress?
3. Give an account of the Federal Income Tax of 1894.
4. What are the two kinds of prohibitions on Congress? Illustrate.
5. Debate, Resolved, that our present committee system of Congress should be ended or amended.

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CHAPTER XI

THE FEDERAL JUDICIARY

“ John Marshall . . . presided over the Supreme Court from 1801 till his death in 1835 at the age of seventy-seven, . . . No other man did half so much either to develop the Constitution by expounding it, or to secure for the judiciary its rightful place in the government as the living voice of the Constitution. No one vindicated more strenuously the duty of the court to establish the authority of the fundamental law of the land, no one abstained more scrupulously from trespassing on the field of executive administration or political controversy. The admiration and respect which he and his colleagues won for the court remain its bulwark; the traditions which were formed under him and them have continued in general to guide the actions and elevate the sentiments of their successors.” BRYCE, “American Commonwealth,” Vol. I, p. 261.

The Federal Courts.—The weakest branch of our government was, at first, the judiciary. This was at the time when, as Alexander Johnston has said, “Almost every State in the Union in turn declared its own sovereignty and denounced as almost treasonable similar declarations in other cases by other States.” Pennsylvania, for instance, in 1809, being offended at the Supreme Court in the *Olmstead* case, indorsed this resolution of her legislature: “*Resolved*, That in a government like that of the United States, where there are powers granted to the General Government, and rights reserved to the States, it is impossible, from the imperfections of language, so to define the limits of each, that difficulties should not sometimes arise from a collision of

powers; and it is to be lamented, that no provision is made in the Constitution for determining disputes between the General and State governments by an impartial tribunal, when such cases occur."

Among the eleven States disapproving of this strange and contradictory resolution was Virginia, whose general assembly ably defended the Supreme Court and replied in part as follows:—

"The committee, to whom was referred the communication of the governor of Pennsylvania, covering certain resolutions of the legislature of that State, proposing an amendment to the Constitution of the United States, by the appointment of an impartial tribunal to decide disputes between the State and Federal judiciary, have had the same under their consideration, and are of opinion that a tribunal is already provided by the Constitution of the United States, to wit: the Supreme Court, more eminently qualified from their habits and duties, from the mode of their selection, and from the tenure of their offices, to decide the disputes aforesaid in an enlightened and impartial manner, than any other tribunal which could be erected.

"The members of the Supreme Court are selected from those in the United States who are most celebrated for virtue and legal learning; not at the will of a single individual, but by the concurrent wish of the President and Senate of the United States. They will therefore have no local prejudices and partialities.

"The duties they have performed lead them necessarily to the most enlarged and accurate acquaintance with the jurisdiction of the Federal and several State courts to-

gether, and with the admirable symmetry of our government.

“The tenure of their office enables them to pronounce the sound and correct opinions they may have formed, without fear, favor, or partiality.

“The judiciary are the weakest of the three departments of government, and least dangerous to the political rights of the Constitution; they hold neither the purse nor the sword, and even to enforce their own judgments and decrees, must ultimately depend upon the executive arm.”

Under the Articles of Confederation there had been no Supreme Court. The sore need of one was a lesson the Fathers of the Constitution had learned. And so they created a Federal court system as one branch of our government. This branch has long since come to its true position as an equal and coördinate part of our governmental system. Indeed, some critics now fear it is too strong.

Federal Judges.—The courts of the regular Federal judiciary are of four classes; but the judges who sit in these courts are divided into only three classes: (1) Supreme Court Justices, who receive a salary of \$12,500 (\$13,000 for the Chief Justice); (2) Circuit Judges, who receive \$7,000; and (3) District Judges, who receive \$6,000. Compared with the incomes of practicing lawyers of equal ability, the salaries of these judges—especially the Supreme Court Justices—are absurdly low. All Federal judges are appointed by the President, with the consent of the Senate. The tenure of office of all Federal judges is the same, namely, for life. They can be removed by impeachment in case of misconduct. But of the 450 and more Federal judges since

1789, only two have been thus removed, and they were accused of technical misconduct, not of corruption.

The four classes of Federal courts are: (1) The Supreme Court, (2) Circuit Courts of Appeals, (3) Circuit Courts, (4) District Courts.

1. Supreme Court.—The Supreme Court was created by the Constitution itself, and hence cannot be abolished



The Supreme Court Chamber

by Congress. It consists at present of nine Supreme Court Justices; one is known as the Chief Justice, and the other eight are called Associate Justices. The Supreme Court holds its annual sittings in Washington, beginning in October and lasting till May or July. The sitting ending in May, 1910, is spoken of as the October term for 1909. About 350

cases are disposed of a year, nearly all of them cases brought to this court on appeal from the lower courts.

2. Circuit Courts of Appeals.—All the “inferior” Federal courts were created by Congress, as the Constitution stipulates. There are nine Circuit Courts of Appeals, corresponding in number to the justices of the Supreme Court, one of whom is assigned to each circuit. Each of these courts is made up of three Circuit Judges, or of two Circuit Judges and the Supreme Court Justice of the circuit. These courts were created by act of Congress in 1891, when it was found that the Supreme Court was four years behind with the cases awaiting trial, and was steadily getting farther behind. Many cases therefore are finally ended in the Circuit Courts of Appeals, leaving no chance to appeal to the Supreme Court. However, if a case clearly involves the Federal Constitution or laws, it may still be appealed to the Supreme Court.

3. Circuit Courts.—The next lower courts are the Circuit Courts, each of which may be held by a Circuit Judge or a District Judge, or by the two together. They have original jurisdiction of certain important kinds of cases under Federal law; but much of the work of these courts consists in hearing cases removed from the State courts in suits where both courts had jurisdiction, i. e., in cases of concurrent jurisdiction.

4. District Courts.—Each State either constitutes one judicial district, or is divided into two or three or four districts. A District Court is held in each district by a District Judge. Usually there is one District Judge for each district, but some districts have two judges, each holding court by

himself. There are now about ninety District Courts in the United States. They have original jurisdiction of most cases under Federal law that do not belong to the circuit courts. Bankruptcy cases and trials involving offenses on Indian reservations—such as selling liquor to the Indians—are examples of cases commonly tried in the District Courts.

Court of Claims.—There is a special inferior court, known as the Court of Claims, consisting of five judges. It was created to settle private claims against the United States, for an individual could not sue the government in ordinary courts. Claims found valid by this court are paid by Congress through appropriations made for that purpose.

Jurisdiction of Federal Courts.—The Federal Constitution defines the jurisdiction of the Federal courts. Cases coming outside of this jurisdiction are left to the State courts. Most cases begin and end in the State courts, for there is no appeal to a Federal court unless there is a Federal question at stake—that is, unless some law or treaty or the Constitution of the United States is called in question. Unfortunately, the sweeping prohibitions of the Fourteenth Amendment are doing much to break down the distinction between State and Federal questions. These prohibitions are, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”

The jurisdiction of the Federal courts extends to the following cases:

1. Cases affecting ambassadors, other public ministers, and consuls.
2. Cases of admiralty and maritime affairs.
3. Controversies in which the United States is involved.
4. Controversies between States.
5. "All cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

As originally adopted, the Constitution permitted an individual to bring suit in a Federal court against a State other than the one in which he was living. An attempt was accordingly made in 1794 by one Mr. Chisholm, to drag Georgia before the Supreme Court. This was so highly displeasing to the States that in 1798 the Eleventh Amendment was passed, declaring that Federal jurisdiction does not extend to suits "commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State." Acting on this principle some States have refused to pay debts they were owing to citizens of other States.

Equity.—The Constitution provides for both law and equity cases. Law offers a remedy only *after* an offense has been committed, *after the damage has been done*. But if an irreparable damage is about to be done, and can be prevented, equity offers the proper prevention. Law offers a *cure*, according to the rigid provisions of the statutes: equity not only offers in many cases a better remedy according to general principles of justice, but often it can furnish *prevention*. To illustrate. A band of desperate men

in a labor dispute, it is asserted, are about to burn a freight train of their employer. This would be a damage difficult if not impossible to repair. The owner may go to the Federal court and secure an "injunction," that is, an order to the men to stay away from the train. Violating this order by approaching the train would constitute "contempt of court," for which the men could be promptly arrested and sentenced to jail by the same judge who gave the order. This illustrates a common equity case.

Equity is a branch of unwritten law, as is the common law. It is designed to work justice where written law and the common law would fail. In the case above given for illustration, it is obvious that the judge lays down the rule (in a sense therefore is a lawmaker), judges as to its infraction, and pronounces sentence. We sometimes hear complaints concerning "government by injunction." But since prevention is better than cure both in medicine and in law, this power of granting injunctions and other orders will probably not be taken away from the courts.

Court Officers.—The President appoints for each District Court a District Attorney and a Marshal. The District Attorney is charged with the duty of bringing suits against the violators of Federal law in his district. The Marshal, like a sheriff, is the executive officer in his district. His duty is to execute the orders of the court. United States Commissioners, appointed in each district by the Circuit Court correspond somewhat to the justices of the peace in the State judicial system. They hear complaints, examine witnesses, prepare matters for the sessions of the court, and in various ways assist both District and Circuit Courts.

Workings of the Courts.—There are four grades of law in the United States, and they are, in the order of their importance: (1) Federal Constitution; (2) Federal laws and treaties; (3) State constitutions; (4) State laws. In case of conflict, the lower must give way to the higher.

Thus the judges in a Federal court may overrule a State law, a provision in a State constitution, or a Federal law, if it conflicts with the Federal Constitution. The Federal Constitution is the “supreme law,” to be changed only by the people by the process of amendment provided therein. Do the Federal judges therefore control the State legislatures and Congress? The real work of the court on constitutional questions, is to pass judgment not on the wisdom of the law, or the benefits or evils of the law, but on the sole question of the *constitutionality* of the law. When the first law of Congress was declared unconstitutional (*Marbury vs. Madison*, 1803) by the Supreme Court, Chief Justice Marshall laid down this sound principle: “So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the court must determine which of these conflicting rules govern the case.” The Constitution must of course prevail. The court is thus seen to be merely one more of those “checks and balances” provided so liberally in our system of government. The court cannot “control” the legislature, but merely checks the legislature when it attempts to overstep its true constitutional limits.

The courts try only concrete cases. The Supreme Court

refused to furnish President Washington opinions on a set of abstract questions which he presented to the court. An actual case must be brought before it. The Supreme Court listens to the arguments in a case, reads the printed briefs filed by the attorneys, and then discusses the matter. One member writes an opinion on the case, and brings it in for further discussion. If the other members concur, it is printed and stands as the opinion of the court. If the members differ among themselves, any one or more may sign an opinion of their own; but the opinion of the majority is the opinion of the court. Thus many important opinions are given by a "divided court"; some by a unanimous court. The famous Northern Securities case decision came from the court divided five against four. The written opinions of the Federal courts are all bound in substantial volumes and preserved in law libraries in every section of the country, where they are consulted and followed by the lawyers and judges. Precedent is religiously followed.

The Supreme Court has great stability, yet it sometimes reverses itself. This court changes, but changes slowly.

QUESTIONS ON THE TEXT

1. Name five Federal courts.
2. How did the Federal courts rank at first among the three branches of our government? Why?
3. State briefly the action taken by Pennsylvania and Virginia in 1809-1810.
4. What is the present position of our Federal courts?
5. What are the salaries of the different Federal judges? Term of office? Method of appointment?
6. How may judges be removed? How many have been thus removed?

7. State the jurisdiction of the Federal courts.
8. What kind of cases come before the Supreme Court? The Circuit Courts of Appeals? The Circuit Courts? The District Courts?
9. What kinds of cases may be appealed from State to Federal courts?
10. May a person sue a State? Why?
11. Define Equity, and illustrate its meaning.
12. Name three court officers. Give duties of each. Method of appointment.
13. How many grades of law in the United States? Which is "supreme"? Who can change the "supreme" law, and how?
14. Are our judges above the law? Do we have judge-made law?
15. Describe the workings of the courts.

QUESTIONS SUGGESTED BY THE TEXT

1. Debate, Has the Fourteenth Amendment (sec. I) been justified?
2. Debate, Government "by injunction" is contrary to public policy.
3. Should five Supreme Court judges have the power of overruling a law passed by the 400 members of Congress and signed by the President?
4. Have we too many "checks and balances" in our government?
5. Name the present members of the Supreme Court. Name the District Judge for North Dakota. In which judicial circuit is North Dakota, and who are its Circuit Judges? (See "Congressional Directory.")
6. Give a sketch of the life of John Marshall.
7. Secure a copy of a brief and examine it carefully. (See any lawyer or judge.)

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Harrison, "This Country of Ours," pp. 300-330.

CHAPTER XII

PUBLIC FINANCE, MONEY, AND BANKING

"(1) The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.

"(2) The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought all to be clear and plain to the contributor and to every other person.

"(3) Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state." ADAM SMITH, "Wealth of Nations," Bk. V, Ch. 2, Part II.

Public Finance.—Public finance deals with the revenues, expenses, and debts of a government. The main difference between public finance and private finance is this: the private individual must adjust his expenditures to his income, whereas the state makes its income big enough to fit its expenditures. A surplus at the end of the year is a good thing for the individual. It is a bad thing for the state, for it means that too much money has been taken from the pockets of the people. It also is, as our bitter experience proves, a fruitful source of wasteful and corrupt expenditures. A *budget* is an estimate of the state's expenses and revenue for the next "fiscal" year. The fiscal year means a year of the treasury administration, and is commonly counted from July 1 to June 30. The budget is prepared

by the official in charge of the treasury, and his estimates are based on expenses and income of the past year. The legislative body passes on the budget and may or may not follow it as a guide in providing the income and making the expenditures for the coming year. Our own Congress has on many occasions paid scant heed to the budget, spending freely and meeting the deficit by borrowing.

Public Expenditures.—The Federal government is now spending more than \$1,000 a minute, day and night, 365 days in the year. This means about \$1,500,000 a day, and more than \$500,000,000 a year. Each Congress spends over a billion dollars. Truly it must be as Speaker Reed replied: "This is a billion dollar country." For what is this vast sum expended? From what sources does it come? These are interesting questions to answer.

Objects of Expenditures.—Taking the year 1908 as a typical year, we find the four principal objects of expenditure were, in the order of their size, as follows:

1. Pensions	\$153,892,467
2. Army	139,927,465
3. Navy	118,780,233
4. Panama Canal	38,093,425

The total expenditures for this year (1908) were \$850,000,000. Four *minor* objects of expense, but objects of great and lasting importance to the public, were the following:

1. Department of Commerce and Labor	\$14,850,000
2. The Post Office	13,664,000
3. Department of Agriculture	13,460,000
4. Ambassadors and Consuls	3,745,000

The Post Office, it will be remembered, is almost self-

supporting, most of the expense being met by the sale of stamps. The deficit is met by an appropriation.

A second reading of the above figures will show what a large sum our government is spending for defense in case of war, and what a small sum, relatively, for the peaceful development of the agriculture, industry, and commerce of our country. Before passing final judgment, however, we should look at the expenditures of our State, city, and county, where there is no army and navy. For, after all, but a small part of our taxes are Federal taxes: our local government costs the most.

Public Revenues.—It is evident that the total expenses above described amount to approximately \$10 a head per year for every man, woman, and child in the country. This would bring the expense up to \$50 for a family of five. Who pays this money? How much does it cost to collect it? These interesting questions can be answered in a few words.

Sources of Revenue.—The money to carry on the government comes almost entirely from taxation. The Post Office, the only business conducted by the government, brings in about \$200,000,000 a year. The public land is now nearly gone, so that the revenue from sales of land and from sales of timber and minerals is very small. The kind of taxation relied upon by the Federal government is the kind known as *indirect taxation*. That is, the people pay taxes *indirectly*, largely without knowing it. A direct tax is a tax paid directly by the individual taxpayer to the collector, and recognized by both parties as a tax. An example is the tax on his land paid by the individual to his county treasurer. An example of an indirect tax is the

tariff duty paid to the government by a New York merchant on a silk dress which he later sells to a customer. The customer of course pays to the merchant a "price" made up of these two elements: (1) the cost of the dress plus a profit, and (2) the duty. Ultimate consumers thus in a round-about way pay the indirect taxes of the government, but the blindfolded consumers call it a "price" and not a "tax."

At the present time the Federal government levies no direct tax. The oft-debated income tax would be, of course a direct tax as we now understand the term.

The indirect taxes levied by our government are chiefly of two kinds, (1) Duties on imports, called Tariff, or Customs Duties and (2) Internal Revenue, sometimes called Excise.

1. The Tariff.—Our tariff is of three kinds:

(a) Revenue (no protection).

(b) Protection and Revenue.

(c) Protection (no revenue; a prohibitive tariff, such as that on tin plate).

An example of a revenue tariff is the duty on diamonds. These are not produced in the United States. An example of a protective tariff is the duty on wool and woolens. This tariff produces several millions of dollars revenue and "protects" the American manufacturer of woolen goods. Foreign competitors cannot undersell him.

2. Internal Revenue.—The internal revenue comes principally from these three sources:

(a) Whisky (\$1.10 a gallon).

(b) Beer (\$1.00 a barrel, 31 gallons).

(c) Tobacco (\$0.06 a pound; cigars, \$3.00 per 1,000; cigarettes, \$1.08 per 1,000).

The income from internal revenue does not fluctuate as much as that from the tariff. Thus the panic of 1907 caused a shrinkage of \$46,000,000 in the tariff, and of only \$18,000,000 in the internal revenue for the year.

3. Corporation Tax.—Congress in 1909 adopted an income tax on corporations, but named it an “excise tax.” It is a tax of one per cent. on the total net income of every business corporation over and above \$5,000. The tax is intended to serve two distinct purposes: (1) A fiscal purpose, that is, to bring in revenue; (2) a social purpose, that is, to afford government regulation of corporations.

The constitutionality of this law remains to be tested by the courts.

Total Income for 1908.—For the fiscal year 1908 the total receipts of the government were as follows:

Tariff	\$286,113,130
Internal Revenue	251,711,127
Post Office	191,478,663
Miscellaneous	63,301,862
	\$792,604,782

Who Pays the Federal Tax?—It is difficult to determine the exact amount of tariff and internal revenue paid by any individual. This is considered as an argument both for and against this mode of taxation. But the government has published statistics by means of which we can tell, approximately, what a common laboring man contributes each year on three simple articles of daily consumption—

without knowing it—to the support of the government.¹ Let us assume, for illustration, that the man has a wife and eight children; that is, that the family consists of ten persons. And let us ignore the fact that they wear woollen clothing of any kind, use any imported toys, or rice or any other protected article, except sugar alone. Let us also assume that the man consumes tobacco and liquor to the extent consumed by the *average* man throughout the country. Under these conservative conditions the Federal taxes on only three things for a family of ten would be as follows:

Sugar		\$7.50
Tobacco		2.76
Liquors		3.84
Total		\$14.10

Out of every dollar spent for tobacco, twenty cents goes to the government. Of every dollar spent for imported sugar, twenty-five cents goes to the government.

Criticisms.—The main argument for this Federal system of indirect taxation are these: It is simple and easy to administer, it is definite and certain (the internal revenue, that is), bringing in a steady and large revenue; it is inexpensive to administer, taking “out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state.” The arguments against it are these: It makes the poor man pay as much as the rich man, and sometimes much more, and is therefore unjust. They should pay, as Adam Smith says, “as nearly as possible in proportion to their respective abilities.”

¹ Statistical Abstract of the United States, 1908 (published annually); 18th Annual Report, U. S. Bureau of Labor, 1903.

And further, this system causes waste and extravagance on the part of the government, no one taxpayer realizing keenly enough the drain on his own pocket. And it is further argued against customs duties, especially the protective tariff, that it takes from the customer's pocket not only a revenue for the government on goods imported, but also an extra profit to go into the pocket of the domestic producer; and that it gives special favors to the few at the expense of the many, thus forming a privileged class who in turn corrupt the government.

Cost of Collection.—Thousands of men are employed as customs officers and internal revenue officers. There must be a collector or deputy collector (of the tariff) at every seaport, no matter how small the village, and at every village at or near the Mexican border on the south and the Canadian border on the north. Yet the expense of this vast revenue machinery is relatively small. The cost of collecting the tariff now averages three per cent. of the total amount collected; and the cost of collecting the internal revenue averages two per cent. of the amount collected.

Debt.—The debt of the United States is very small compared with that of other countries, such as Great Britain and France. This is seen in the table below.

NATIONAL DEBTS

	<i>Year</i>	<i>Debt</i>
United States (population 90,000,000)	1908	\$938,132,409
Great Britain (population 45,000,000)	1906	\$3,839,620,745
France (population 39,000,000)	1906	\$5,655,134,825

Our debt could easily be paid in one year, if it were due.

But most of it runs for thirty years. Meanwhile the annual interest charge is about \$21,000,000. Most of this debt has been handed down from Civil War times.

Subtreasury System.—Shall the government deposit its funds in banks, as individuals do? Or shall it have a medi-



In the Mint, Philadelphia

æval strong box and lock up its moneys? Our government has adopted the “strong box” system, known as the subtreasury system. Most of the funds (some are left in banks) are placed in the United States Treasury direct, or in one of the eight subtreasuries, especially the large one in Wall Street, New York. The money is thus

withdrawn from commerce and trade, business men say, and the country is made to suffer unnecessarily.

Money.—In 1792 the United States established a mint for the coinage of money. There was “free coinage” of gold and silver at the ratio of 15 to 1, that is, fifteen ounces of silver had the same coinage value as one ounce of gold. The free coinage and bimetallism features consisted in this: the government undertook to coin into standard money all

the bullion of these two metals that was presented at the mint. In other words, *free* coinage means *unlimited* coinage: bimetallism, two standard metals. The ratio was later changed to 16 to 1. The coinage of the silver dollar was stopped in 1873, the policy of bimetallism thus coming to an end. Silver changed from a *standard* to a *subsidiary* coin. Three separate acts since that time have dealt with the silver dollar. It became an issue in politics even. However, in 1900 a gold standard law was passed which among other things provides for the free coinage of gold, and the limited coinage of the silver, the nickel, and the copper coins necessary as "change." All these subsidiary coins are now redeemable in gold, and hence by means of a single gold standard the country is able to keep all its coins circulating on a parity with gold. No silver dollars have been coined since 1904. The place of the dollar has been taken by the fifty-cent pieces and quarters and by the paper certificate. These are more convenient.

Currency.—Currency means *paper money*. The United States has now outstanding four kinds of paper money. Strictly speaking, this is not money at all, but *credit*, "*a promise to pay money*." The government stands ever ready to make good this promise by paying gold and hence this currency and these subsidiary coins circulate freely as money. Yet, to understand adequately our monetary system, it must be distinctly borne in mind that these are only promises to pay money.

The four kinds of currency are (1) Greenbacks, (2) Silver Certificates, (3) Gold Certificates, (4) National Bank Notes. The *greenback*, legally called a *United States note*, was

first issued during the Civil War. Up to 1879, when it first became redeemable in gold, it circulated at varying rates of discount from one to sixty per cent. Now, of course, it is worth full face value, for the reason above stated. *Silver certificates* circulate in place of the heavy silver dollars kept on deposit, dollar for dollar, at the treasury. *Gold certificates*, similarly, circulate in place of the gold coin on deposit, dollar for dollar, at the treasury. The paper is more convenient, and there is no loss by abrasion of the coin while on deposit. The fourth class named above, *national bank notes*, consists of paper money issued by the national banks of the country. But since the banks pay the government for these notes, and since the government guarantees their redemption, keeps a fund ready to redeem them, and does at once redeem every note of failed banks, the people have rightly come to regard them as government paper money.

A great deal of the money coined in the United States since 1793 has found its way out of the country. This is especially true of gold, as statistics prove. From 1793 to 1908 our coinage was as follows:

Gold	\$3,020,582,272.00
Silver	953,616,830.20

The interesting table below will show the money that was in the country in 1908:

Money in the United States, 1908

Gold	\$1,618,133,492
Silver	563,277,812
Nickel and Copper	147,355,783

Paper:

Greenbacks	346,681,016
National Bank Notes	698,333,917
Gold Certificates, included above under gold	782,976,619
Silver Certificates, included above under silver	465,278,705

The Act of 1900, fixing the single standard of value, declares, "The dollar consisting of 25.8 grains of gold nine-tenths fine (23.22 grains pure gold) . . . shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard." A study of the above table will show how great the strain would be should the government ever be called on to redeem the various forms of money in gold.

The National Banking System.—The reader will of course remember that most of the banking business of the country is under State control. There are under State control some 18,000 institutions of the following kinds, all doing a banking business; State banks, private banks, savings banks, and trust companies. There are some 7,000 national banks, with a banking business identical in many respects with the business of private and State banks. But national banks, possess this difference—they alone can issue bank notes.

Genesis of National Banking System.—Before the Civil War there were no national banks, bank notes being issued by the other banks. But as the war progressed, more money was needed by the government than the taxes could bring in; it was even difficult to borrow money through the sale of bonds. A new market for bonds was needed. Then it was that the national bank was invented. A law was

passed, killing off all bank notes then in circulation, and providing for a new kind of bank note—a national bank note—based on government bonds which the bank must purchase. The result of this law was our present national banking system, with its bond-secured currency.

The System To-day.—There are many provisions in the Federal law governing national banks, but the following four are deemed most important:

(1) *Capital.*—The smallest bank that can be started must have a capital of at least \$25,000.

(2) *Comptroller of the Currency.*—All national banks are under the Comptroller of the Currency at Washington, to whom they report five times a year. These reports are published in the newspapers, and also in book form.

(3) *Note Circulation.*—All national banks must take out a certain amount of national bank notes, the amount being one fourth of their capital in the case of small banks. This is the process: The bank buys United States bonds (wherever they can be found for sale cheapest) and presents these at Washington. Here the bonds are deposited with the government, and national bank notes issued to the amount of the par value of the bonds. Of course the bank owns the bonds thus deposited, and receives the interest on them. The notes are taken home and loaned out, also at interest. While the national bank is thus drawing interest twice on its money, yet there are these drawbacks to be considered: (a) The bonds probably cost a premium of eight or ten per cent., which the bank loses. (b) The bank must keep on deposit with the government a cash “redemption fund” of five per cent. of the notes taken out. (c) The bank must

also pay a small tax—about one half of one per cent.—on its circulation. These drawbacks overbalance the benefit of the double-interest. The notes are not legal tender, yet they pass readily as money. The bank must redeem them, upon demand. If the bank fails, the note holder is safe, for the government then redeems the notes. National bank notes are considered, therefore, absolutely safe.

(4) *Reserves*.—The depositor as well as the note holder must be protected. Hence the law covering *reserves*. Here we find the most remarkable feature of the system. Small banks must keep a reserve of fifteen per cent. of their deposits. The three central reserve cities (New York, Chicago, St. Louis) must keep on hand twenty-five per cent. of their deposits. Other large cities, known as reserve cities, must likewise keep twenty-five per cent. of deposits on hand. So far, this is very simple. But a reserve in the bank's vault is dead money, it brings no income. We find the law—note carefully—makes these additional provisions concerning reserves: The small cities—those with the fifteen per cent. reserve, may keep six per cent. in their vaults and nine per cent. with banks in the reserve cities. And banks in the reserve cities—those with the twenty-five per cent. reserve—may keep twelve and a half per cent. in their vaults and twelve and a half per cent. in the central reserve cities. In the central reserve city twenty-five per cent., of course, is kept in the vaults. The question is, What has become of the fifteen per cent. reserve of the banks in the small city or village? So many big issues depend on this question—issues even involving the money market of Wall Street—that it will pay us to face this hard problem bravely

and to reach, if possible, a correct answer. A man, for example, deposits \$6,666.66 in a Grand Forks bank. The bank at once loans out most of this money, keeping on hand only the legal reserve, fifteen per cent., or \$1,000. This is to protect the depositor. Following now the provisions of the law literally, as laid down above, we find the \$1,000 taking this course: (a) In the vault of the Grand Forks bank \$400 as "reserve"; sent on to a bank in a reserve city, \$600. (b) Of the \$600, now a bank deposit, \$450 is loaned out in the reserve city, say St. Paul; \$150 is the "reserve" of the St. Paul bank. Of this \$150, half, or \$75 is placed in vault in St. Paul as "reserve"; \$75 is sent on to the central reserve city—say New York. (c) Here the \$75 is now a bank deposit; \$37.25 is loaned out on the money market; and \$18.75 is put in the vault as "reserve."

While this looks tedious and involved, yet it is quite simple. The reserve cities pay interest on bank deposits, hence "reserves" will be kept there as largely as possible, for they also count as reserves at home. And when we remember that the national banks alone have deposits of over \$4,000,000,000, and that a part of the deposits of almost every bank find their way to New York city, through a process illustrated above, we understand the mighty significance of Wall Street as a money market.

Weakness of National Banking System.—The draining of funds from the country into New York city is not a weakness peculiar to the national banking system alone, since State banks operate in substantially the same way. There are two weaknesses of the national banking system:

(1) The notes are inelastic. A bank currency should be both safe and elastic. National bank notes are safe but not elastic. Their amount depends on the price of government bonds, not on the demands of business. (2) The government, in standing behind the national bank notes, is actually engaged in manufacturing bank credit for the country, a very proper business for the banks to do, but not a true government function. The government should furnish the country its money, *but not its credit*. Let the government coin money. Let the banks issue credit. Let us have a separation, not a mixture of these two functions. Or, if the government wants to go into the banking business, as is done in Germany, let it assume full control and full responsibility for the bank.

These constitute, in brief, the arguments we have for and against our national banking system.

QUESTIONS ON THE TEXT

1. State Adam Smith's three rules of taxation.
2. What is public finance? Compare with private finance.
3. What is the budget?
4. What is the annual expenditure of our government?
5. Name eight objects of expenditure, and amount for each.
6. What are the sources of our public revenues?
7. Define indirect and direct taxation. Illustrate.
8. Name three kinds of tariff. Illustrate. Three branches of internal revenue.
9. Explain the corporation tax. Is it direct or indirect?
10. State amount and sources of Federal income for 1908.
11. Who pays the Federal tax?
12. Criticize our Federal tax system. State cost of collection.
13. Compare our debt with that of France and England.
14. Describe our subtreasury system. Criticize it.

15. Explain fully the money and the currency systems. Four kinds of currency.
16. Define credit. Explain Act of 1900.
17. Give statistics of our coinage; our present money and currency. Explain.
18. Describe fully our national banking system; genesis; present system; weaknesses.
19. A "reserve" of \$1,000 means how much cash reserve, and where?

QUESTIONS SUGGESTED BY THE TEXT

1. Should the United States employ direct taxation?
2. Should a Federal income tax be adopted?
3. Debate, The protective tariff policy makes for the public welfare.
4. Could the United States to-day redeem in gold coin all the "credit money" outstanding?
5. Should we have more gold and less credit money? How bring this about?
6. Should banks or the government furnish credit money?

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CHAPTER XIII

THE NATION AND THE STATES

"The Constitution in all its provisions looks to an indestructible Union, composed of indestructible States." JUSTICE CHASE, Supreme Court of the United States (*Texas vs. White*).

Guarantee of Republican Government.—The Constitution guarantees to every State a republican form of government. This government must be representative. It cannot be a monarchy, on the one hand, nor on the other, a pure democracy.

Invasion or Domestic Violence.—The Constitution also guarantees against invasion and domestic violence. In case of an internal disturbance, such as a violent riot, or a labor war, or other form of domestic violence, the Federal government can act only at the invitation of the State. If the legislature is in session, it must apply for Federal protection. The governor must act when the legislature is not in session. The President may then call out the militia of other States, or may use the army and navy if he finds such drastic measures necessary.

Interstate Comity.—Each State is considered independent of its neighbors. Yet a code of State good manners, known as interstate comity, prevails among the States. It is the duty of the States, says Hart, "to act towards their sister States with courtesy, consideration, and good humor."

The Constitution adds to this the express requirement that the "citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Thus a citizen may pass through another State, reside there, acquire property there, and use the courts there. Corporations are not citizens. They are artificial persons, and must secure permission from the State before entering and doing business there. It is, however, usual and customary for a State to allow corporations created in other States to carry on business in that State.

Extradition of Criminals.—The governor of one State may send "requisition" papers to the governor of another State, asking for the arrest and return of a fugitive criminal. There is no way to compel a governor to comply with this request. Indeed, requisitions are sometimes refused on one pretext or another, especially if there is personal animosity between the governors.

Full Faith and Credit.—"Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." An illustration of this rule is the case where a divorce, granted to a Dakota citizen by a Dakota court on the grounds of desertion (both parties to the divorce having come within the jurisdiction of the State court), is valid in New York State, where the divorcee later removes to live, although New York State does not grant a divorce for desertion.

The Public Domain.—We have seen, in a preceding chapter, that all the States in the Union, excepting nineteen, were organized Territories before they became States. These organized territories were carved out of the Public Domain.

The title to the land of course remained with the United States and did not pass to the Territories organized upon it. And this vast area of land—some 2,825,000 square miles, or 1,800,000,000 acres—has been in large part disposed of by the Federal government, and in these two ways: Gift; Sales. There yet remains in the western mountainous part of the United States about 500,000,000 acres of public lands, or an area about eleven times the size of North Dakota. Much criticism has been made of the public land policy of the United States: ignorance rather than corruption has been the prevailing weakness in disposing of the public domain.

Disposal of Public Lands by Gifts.—(1) Immediately after the Revolutionary War the United States began the practice of giving away the lands to private individuals. The soldiers of the Revolution received liberal grants. Also after the Mexican War the troops received millions of acres.

(2) Grants of approximately 100,000,000 acres have been made to the States direct, primarily for the purpose of common schools. Beginning with Ohio in 1802, the grant was one section in each township (i. e., one thirty-sixth of the public domain); and in 1853 the grant was doubled (sections 16 and 36 in each township) for common schools. Thus the States coming into the Union in later years have fared much better than their older sisters. The Federal government has not stopped with gifts for common schools. Beginning with 1862, grants have been made for the support of agricultural colleges in every State. States containing no public lands were permitted to select their share in

the States and Territories farther west. The size of this grant depended upon the number of congressmen from a State, the grant being 30,000 acres for each member, i. e., a minimum of 90,000 acres for the State. Other gifts to the States in more recent years are for State capitols, State universities, and other State institutions.

(3) But the most generous gifts of all have been to aid "internal improvements." Canals first came in for this form of aid, but failed to prosper under the stimulus. Subsidies (as the land grants are commonly called) have been extended to railroads more than to canals and education combined. To take a concrete case: The Northern Pacific railroad received a grant along its right of way, every alternate section of land in a strip forty miles wide across Minnesota and eighty miles wide across North Dakota, Montana, the northern end of Idaho, and Washington. Half the area of similar strips of land, forty miles wide, was given to the Union Pacific, Central Pacific, Atlantic and Pacific, Southern Pacific, and other roads. In this way, according to the estimates of the General Land Office, total grants of 156,893,468 acres have been made to aid in railroad construction. Some of this land is, of course, waste land, and has never been accepted by the roads. The actual amount of land patented by the railroads is, approximately, 115,000,000 acres, an amount equal to the combined areas of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, and Maryland. The advantages and disadvantages of this immense subsidy have been the subjects of many a debate.

Disposal of Public Lands by Sale.—The bulk of the public domain has now passed into the hands of the actual settler. Millions of homes have been erected upon it. Various schemes have been tried for getting the lands into the possession of actual farmers. Experience has taught that there are two good ways of doing this. The two ways of "*taking a claim*" now in common use are these—(1) Pre-emption and (2) Homestead.

(1) A citizen of the United States, twenty-one years old, or the head of a family if under twenty-one, may make the proper entry upon a quarter section (160 acres), and after living upon it for fourteen months continuously may "prove up" and receive a deed by paying a small price for the land. The price is \$1.25 per acre; or if the land be within the strip of the railroad grant, \$2.50 per acre.

(2) The second method of "taking a claim" is the homestead method. This is, strictly speaking, not a sale by the government at all but an outright gift of land to the settler. However, in certain classes of homestead lands, known as "double-minimum," there is a price, varying from 50 cents to \$2.50 per acre. Any citizen of the United States who is the head of a family, or who has reached his twenty-first year, and who does not own over 160 acres of land, is entitled to enter a quarter section. He can secure the title thereto by establishing and maintaining his residence thereon and cultivating the land for a period of five years.

In the case of timber and stone lands, coal lands, silver and gold lands, etc., special rules govern, for claims cannot be taken here in the usual manner. The land laws have

provided a scale of prices appropriate to each class. Mention was made in a preceding chapter of our national forests, which have been wisely set aside by the President out of the public domain. In this way several millions of acres have been reserved for the good of the general public.

We have spoken above of the quarter section or 160-acre tract of land. Who marked off these squares on the vast checkerboard of the public domain? This leads us to an examination of the government survey.

Survey of Public Lands; the Congressional Township.—

A land survey in the original thirteen States is an interesting thing. The boundary of a farm is literally described by landmarks—trees, hills, bowlders, posts, etc. Congress, however, under Jefferson's influence, in 1785 adopted the "useful and intelligent" method of rectangular surveys for the unoccupied public lands. The principle is very simple. It is this: lay out lines east and west a mile apart, and cross these by north and south lines a mile apart. The square mile contains one section, i. e., 640 acres. The square six miles on a side is a congressional township, and contains thirty-six sections. Beginning with a standard parallel as a base line, the townships are numbered north and south from this line. A township 900 miles north of this base line would thus be numbered township 150 north. A principal meridian is taken also, and from this line rows of townships, or *ranges* as they are always called, are numbered east and west. In a particular township the sections are numbered in the manner shown in the diagram on the next page.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

The government grants its deeds by using a very simple description therein like the following: "southeast quarter, section 24, township 150 north, range 10 west of the first principal meridian." This method of describing land is followed now in the county records. The government has spent about \$200,000,000 in surveying and caring for these public lands. The total income to the government thus far for the lands disposed of is only about \$350,000,000—a small sum indeed. Has the government been a successful landlord?

Division of Powers: National Sovereignty and State Sovereignty.—Since we have an indestructible Union of indestructible States, there must be a division of powers between the Nation, on the one hand, and the States, on the other. Each is sovereign in its own field. Such a division was established by the Federal Constitution. This Constitution is a grant of powers and may be changed. It

has been changed, that is, amended, fifteen times. Let us examine the present division of powers.

First, as to the division of powers in the Constitution itself. The States originally retained the governmental powers that were not granted to the Federal government by the Constitution. Thus the States have control over education, over the civil and religious rights of the citizens, over the rules of marriage and divorce, over property, over contracts, over most crimes, over corporations and business, over social relationships, and over local government. Within this large sphere the State is sovereign. It is therefore evident that while the State does not have control over "everything," it does have control over almost all the common daily activities of the people. To the Federal government there is granted exclusive control over the tariff on imports, over foreign and interstate commerce, over naturalization, over coinage of money, over post offices, over patents and copyrights, over the army and navy, over war and peace and treaties. The Constitution contains certain *prohibitions* on both the Federal and the State governments. The States are forbidden to pass any laws impairing the obligation of contracts. The Federal government is forbidden to grant any title of nobility, to levy a duty on exports, or to levy a direct tax unless the same is apportioned among the States according to population.

Second, as to the division of power in the amendments to the Constitution. Ten of these fifteen amendments were passed at the very outset. Indeed, the Constitution would never have been ratified had not these amendments

been promised in advance. The first ten amendments went into effect in 1791. They impose certain limitations on the Federal power. They are in the nature of a Bill of Rights, and since most of the State constitutions then in effect already contained these provisions, these limitations were made to apply only to the Federal government. The most important of these provisions relate to the following subjects: freedom of religion; right to bear arms; quartering of soldiers in time of peace; protection against searches and seizures, except upon a proper warrant; procedure in criminal cases; the right of trial by jury in civil cases; and protection against being "deprived of life, liberty, or property, without due process of law." The reader will note that these provisions limit the power of Congress to do certain things, but do not limit the power of the States. Thus the right of the people to keep and bear arms shall not be infringed *by Congress*, but the States may limit or deny this right if they choose, and if their own constitutions permit. Likewise, Congress can make no law respecting an establishment of religion, or abridging the freedom of speech, but a State can establish a State church, or take away freedom of speech, if its own constitution permits such a course. But it is hardly necessary to add that all State constitutions now contain these two limitations.

The first ten amendments limited and narrowed the powers of the Federal government. Likewise the Eleventh Amendment, which took away the jurisdiction of the Federal courts over suits against States commenced by individuals living in other States (page 134).

The Civil War brought a change, amounting to a politi-

cal revolution, in our Federal system. The fundamental issue at stake was *State sovereignty* against *National sovereignty*. Nullification, the power of a State to nullify a law of Congress, and Secession, the right of a State to withdraw from the Union, were the two persistent and deep-rooted doctrines which received their eternal quietus in this fearful struggle. A reaction at once set in. Not only was the old doctrine of State sovereignty dead, but a new idea of National sovereignty was born. More power was given to the Nation; less power remained with the States. Abraham Lincoln, in his Gettysburg address in 1863 applied the word "nation" to our Federal Union. It was the first important public occasion upon which the word had ever been so used in this country. From that moment on it was incorrect to say "The United States *are* a great country." The correct phrase became, "The United States *is* a great nation."

Following the Civil War came three amendments to the Constitution, the Thirteenth, Fourteenth, and Fifteenth. Each subtracted from the power of the States and added to the power of the Federal government. The Thirteenth abolished slavery—a form of property over which the States had been exercising exclusive jurisdiction. This amendment left the negro a free man. The Fourteenth Amendment made the negro a citizen, and aimed to stimulate the States to make him a voter—for even most of the northern States did not allow the negro to vote. But the States were not effectively stimulated by this amendment. The Fifteenth Amendment was accordingly passed, interfering directly with the States' control of the ballot. This amend-

ment did not confer upon the negro the right to vote—at least not directly and positively. Indirectly it had that effect, in large measure, by forbidding any State to deny to any one the right to vote on “account of race, color, or previous condition of servitude.” From the constitutional standpoint, the Fourteenth Amendment was the most important one of the three, as we see by its later application. It made the negro a citizen, but did not stop there. It may be called the great centralizing amendment, since it centralizes so much power in the hands of the Federal government. Aiming primarily to protect the negro citizen, its ultimate result has been to place all personal and property rights largely within the protection of the Federal government. Indeed, some critics go so far as to claim that our business corporations to-day are the real beneficiaries of this amendment.

Protection to Person and Property.—The student will recall, at this point, that the protection of personal and property rights was originally left chiefly to the State governments.

The Fourteenth Amendment, in addition to making the negro a citizen, safeguarded his civil rights (or at least aimed to safeguard them) in these words: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The good intentions of this amendment, namely, to benefit the negro, have not been carried out. The real effect of

the amendment is to delegate, constitutionally, large powers and privileges to private property in general and to corporate property in particular.

A railroad company, for instance, objected to paying a certain State tax in California on the grounds that individuals were taxed at a different rate, and since a corporation was a person and entitled to equal treatment, this constituted a violation of the Fourteenth Amendment. The Federal courts upheld this view. A corporation, therefore, under our Constitution and its interpretation by the courts, is a person, and is entitled to the same immunities as any other person; and since the charter creating it is a contract, which the State cannot impair, its constitutional position as a property holder is a peculiarly secure one. Advantage is taken of this situation by railroads, street car companies, gas companies, and other corporations holding public franchises.¹

Since almost any suit which may arise in any State is likely to involve the "privileges or immunities" of citizens, or the "life, liberty, or property" of some one, or the denial to some person of the "equal protection of the laws," it follows that almost any suit falls under the Fourteenth Amendment and hence may go into the Federal courts. And further, since any State law regulating property—especially industrial and franchise corporations—is likely to violate one of the above provisions, it follows that such legislation would be null and void. Thus, paradoxically

¹ A statement issued in March, 1910, by the Atlantic City (N. J.) Gas Company, contains these three significant claims: 1. We have a perpetual franchise. 2. We have no competition. 3. We have raised the price of gas considerably.

enough, the State can create a corporation and give it a certain franchise, and then, thanks to the Fourteenth Amendment, the State is powerless to regulate or control the thing it has created!

For this reason, States usually insert in a new corporation charter a clause limiting the life of the grant, or reserving the right to alter it. But some legislatures have granted many *perpetual*, *unlimited* franchises, in this way tying the hands of future legislatures for all time to come. The one way out of such a difficulty, always open, is for the State to buy back the franchise at its market value. This has often been done, the State never failing to pay dearly for the franchise which it had given away for nothing. There is no other way out under the present law. And the law cannot be changed by the State legislature or by the executive, or by the people of the State voting at the polls, or by all three put together, or by Congress itself. It can be changed only (1) by the Supreme Court reversing itself and overruling its old decisions, or (2) by the slow, cumbersome process of amending the Constitution itself. The Supreme Court now says a corporation is a *person*, and a franchise is a *contract*, in other words, is property. And the Constitution itself makes the position of such a person and such property impregnable. The States are helpless—unless it be a question of their police power.

The Police Power.—The “supreme law of the land,” according to the Federal Constitution, is the Federal Constitution itself and the Federal laws and treaties made under it. Yet above this “supreme law” is a higher law which we may call the Police Power, the greatest power reserved

to the States. It is the law of self-preservation, the highest of all laws, not only among men but among States. The police power we may define as the power of a State to protect its health, morals, and safety. In protecting these things the authority of the State is "complete, unqualified, and exclusive." The State may regulate or prohibit child labor, establish quarantine, exclude pestilence, either to the body or mind, shut out infectious diseases, obscene paintings, lottery tickets, convicts and other criminals, as well as vagabonds and paupers. The State can do all these things and any other thing which it can clearly show to be necessary and proper to protect its own health, morals, and safety. But the State cannot enact and enforce a law in violation of the Fourteenth Amendment (or other provisions of the Federal Constitution) unless the law be clearly within the police power. If the Federal Supreme Court holds the State law to be within its police power, the law stands regardless of the Federal Constitution. But if the law is not necessary to protect the health, morals, and safety of the State, in other words, is not within the police power, it will be overruled as soon as found to be in conflict with the Federal Constitution.

The people of the State exercise the police power through the State legislature.

QUESTIONS ON THE TEXT

1. What protection does the Constitution guarantee to the government of a State?
2. When may the President send troops into a State?
3. What is interstate comity? Illustrate.
4. Are governors obliged to extradite criminals?

5. To what must the various States give "full faith and credit"? What does this mean? Examples.
6. The public domain: area? ownership? How does the government dispose of it?
7. Describe the first land grant of the government.
8. Give an account of land grants to States—amount, purpose, etc.
9. How much has been given to railroads? Examples.
10. For what other purposes has the government given away lands?
11. Describe two ways of "taking a claim."
12. What lands cannot be taken in ordinary claims?
13. Explain the survey system of our public lands. Who paid for this?
14. What is the supreme law of the land?
15. What is meant by division of powers? What are the two main divisions? Is this division fixed?
16. Over what things are the States sovereign?
17. Over what things has the Federal government exclusive control?
18. State the prohibitions on the States and on the Federal government?
19. What changes in the division of power have the amendments made?
20. Show the nature and purpose of first ten amendments. The eleventh.
21. Do they apply to the States?
22. What constitutional changes did the Civil War make?
23. When was the word "Nation" first correctly applied to our country?
24. State in brief the aim of the last three amendments.
25. From the constitutional standpoint, which is the most important amendment? Why?
26. Where was protection to person and property originally placed?
27. What two things have generally changed this situation? Explain and criticize.
28. Why has corporate property been the beneficiary of the Fourteenth Amendment?
29. What is the police power? Where does it reside?
30. Illustrate its workings: its limitations.

QUESTIONS SUGGESTED BY THE TEXT

1. Give a history of the Federal land grant to the Pacific Railroads. To the Atchison, Topeka, and Santa Fe.
2. Locate, by quarters, section, township, and range, your school-house; your home.
3. Prepare a chart showing (1) powers granted to Federal government; (2) powers prohibited to Federal government; (3) powers prohibited to the States; and (4) powers reserved to the States.
4. Debate: Has the Fifteenth Amendment been justified?
5. Prepare a list of railroad and other public service corporations exercising very liberal franchises under the protection of the Dartmouth College decision and the Fourteenth Amendment.
6. Does the police power reserve to the State as much power as is taken away from the State by the Dartmouth College case and the Fourteenth Amendment?
7. Is our government being too much centralized? Too much decentralized?

REFERENCES

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Bryce, "American Commonwealth," Vol. I, Chs. 2, 3, 4, 26-35.

ON THE FOURTEENTH AND FIFTEENTH AMENDMENTS

Burgess, "Reconstruction."

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PART V

THE STATE CONSTITUTION OR FRAMEWORK OF GOVERNMENT

CHAPTER XIV

ANALYSIS OF THE CONSTITUTION OF NORTH DAKOTA

"The State of North Dakota is an inseparable part of the American union and the Constitution of the United States is the supreme law of the land.

"All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require." State Constitution.

We are now to study the constitution, or framework, of our State government (Appendix D, pages xxxv-lxxviii), and to compare it with the Federal Constitution (Appendix B, pages ix-xxiii). By comparing the two constitutions carefully, section by section, we discern their fundamental similarities as well as their fundamental differences. Let us begin our study by looking at each constitution as made up of four parts, and of four parts only.

LESSON 1

The Constitution : Four Parts.—Copy and learn the outline on the following page, and answer the questions that follow it.

*Part I. Preamble***UNITED STATES**

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

NORTH DAKOTA

We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution.

Part II. Bill of Rights

Amendments I-X.

Article I.

Part III. Constitution Proper or Frame of Government

Articles I-VII.

Articles II-XX.

Part IV. Amendments

Amendments I-XV.

Amendments I-X.

QUESTIONS

1. How many parts are there in the United States Constitution?
2. Does our State Constitution have the same parts?
3. Name these parts.
4. Which has the longer constitution, the State or the United States? * Why is this? ¹
5. Where is the Bill of Rights found in the Federal Constitution?
In the State Constitution?
6. * What is a "Bill of Rights"?

¹ Questions starred are optional only. They are not answered in the Constitution, but can be answered by reference to some good work on the Constitution.

7. How many amendments are there to the State Constitution?
To the Federal Constitution?
8. * How many amendments in all have been proposed to the
United States Constitution? To the State Constitution?
9. Quote both preambles.
10. How many articles in the constitution proper of North Dakota?
Of the United States?

LESSON 2

Bill of Rights.—Read Amendments I–X of the United States Constitution. Write the numbers of these amendments as below. Read Article I of the North Dakota Constitution, and write, opposite the number of each Federal amendment, the numbers of the corresponding sections in Article I of the State Constitution; e. g., opposite Amendment I write Sections 4, 9, 10.

Part II. Bill of Rights

UNITED STATES		NORTH DAKOTA
Amendment	I.	Sections 4, 9, 10.
Amendment	II.	—
Amendment	III.	Sec. ?
Amendment	IV.	Sec. ?
Amendment	V.	Sections?
Amendment	VI.	Sec. ?
Amendment	VII.	—
Amendment	VIII.	Sec. ?
Amendment	IX.	—
Amendment	X.	—

QUESTIONS

1. What rights are mentioned in both constitutions?
2. * Are any of these same rights enumerated in Magna Charta of 1215? Which ones? In the Declaration of Independence?

3. Name some rights in the North Dakota Constitution not found in the Federal Bill of Rights.
4. Can these rights be taken away by the State legislature?
5. May an individual sue the State of North Dakota? (See Sec. 22.)

LESSON 3

Constitution Proper.—Copy in parallel columns the titles of Articles I–VII in the United States Constitution, and of Articles II–XX in the State Constitution, beginning as follows:

Part III. Constitution Proper or Frame of Government

UNITED STATES

NORTH DAKOTA

- | | |
|----------------------------|-----------------------------|
| I. Legislative Department. | II. Legislative Department. |
| II. Executive Department. | III. |
| etc., to VII. | etc., to XX. |

QUESTIONS

1. What is the subject of Article I of the Federal Constitution?
2. What article in the State Constitution corresponds to this?
3. What is the subject of Article II of the Federal Constitution?
4. What article in the State Constitution corresponds to this?
5. What is the subject of Article III of the Federal Constitution?
6. What article of the State Constitution corresponds to this?
7. What is the subject of Article IV of the Federal Constitution?
8. Is there any article in the State Constitution corresponding to this? Why?
9. What is the subject of Article V of the Federal Constitution? Article VI?
10. Are there corresponding articles in the State Constitution?
11. What is the subject of Article VII of the Federal Constitution? Is there any corresponding article in the State Constitution?
12. * How many people are living under the United States Constitution to-day? The North Dakota Constitution?

13. What subjects in the North Dakota Constitution are not found in the United States Constitution? * How account for this?

LESSON 4

Legislative Branch.—Read Article II, Sections 25–70, of the North Dakota Constitution. Copy and fill out the outline below, and answer the following questions.

1. *North Dakota Senate:*

- I. How composed?
- II. Term?
- III. Eligibility?
- IV. How chosen?
- V. Senate powers?
- VI. Impeachment? (Art. XIV.)

2. *North Dakota House of Representatives:*

- I. How composed?
- II. Term?
- III. Eligibility?
- IV. How chosen?
- V. House powers?
- VI. Impeachment? (Art. XIV.)

3. *Provisions common to both Houses of the Legislative Assembly of North Dakota:*

- I. Ineligibility?
- II. Bribery?
- III. Term begins when?
- IV. How fill vacancies?
- V. Salary?
- VI. Quorum?
- VII. Disputed election returns?
- VIII. Open and secret sessions?
- IX. Adjournment

{	Time?
{	Place?
- X. Session

{	Date?
{	Length?
- XI. Enacting clause?

QUESTIONS

1. Where is the legislative power of North Dakota vested? (Where is the legislative power of the United States government vested?)
2. What does it mean to "redistrict" the State? Who has this power? * When was it done last?
3. * In what district do you live? Draw a map of it, and give names of its representatives in the last legislative assembly. (See "North Dakota Blue Book.")
4. Name five prohibitions on the legislative assembly in the North Dakota Constitution.
5. May the North Dakota legislature grant special charters to cities? What are the reasons for your answer?
6. * Which has more powers, Congress or the State legislature?

LESSON 5

Executive Branch.—Read Article III of the North Dakota Constitution and answer the following questions:

QUESTIONS

1. What are the military powers of the governor of North Dakota?
2. What are his pardoning powers? (See Am. 3.)
3. * What are his appointing powers?
4. Has the governor any legislative powers?
5. Has the governor a cabinet?
6. Name the other important executive officers of North Dakota besides the governor. (Section 82.)
7. Are they appointed or elected? * What effect does this have on the governor's position as chief executive?
8. * Are the members of the President's Cabinet appointed or elected? * What effect does this have on the President's position?
9. State the qualifications of the governor and the lieutenant governor.
10. When may the secretary of the State act as governor?

LESSON 6

Judicial Branch.—Read Article IV and Amendment X of the North Dakota Constitution, and answer the following questions:

QUESTIONS

1. Where is the judicial power of North Dakota vested?
2. Is jury trial allowed in the supreme court? What is the reason for this? (Sec. 87.)
3. How are judges chosen in North Dakota? * In other States?
4. Give terms of office of North Dakota judges $\left\{ \begin{array}{l} \text{Supreme.} \\ \text{District.} \\ \text{County.} \end{array} \right.$
5. What is the jurisdiction of our State district courts?
6. * How many judicial districts in North Dakota? In which do you live? Draw a map of it. (See "Blue Book.")
7. What is the jurisdiction of our county courts?

LESSON 7

Future Amendments.—Read Article XV of the North Dakota Constitution.

QUESTIONS

1. How may the constitution of North Dakota be amended?
2. How many times has it been amended?
3. How many years and months does it take to amend the State Constitution?
4. How may the Federal Constitution be amended? (Art. V, U. S. Const.)
5. * How long does it take to amend it?

LESSON 8

Elective Franchise; Corporations.—Read Articles V, VI, VII, and Amendment II of the North Dakota Constitution.
Govt. No. Dak.—12

tion. Copy and complete the following outlines (adding number of sections referred to in State Constitution), and answer the questions below.

1. *Elective Franchise.*

A. Qualifications for voting:

a. Age?

b. Sex $\left\{ \begin{array}{l} \text{In ordinary elections?} \\ \text{In school elections?} \end{array} \right.$

c. Residence?

d. Citizenship $\left\{ \begin{array}{l} \text{United States citizenship?} \\ \text{Certain Indians?} \end{array} \right.$

e. Education?

f. * Civil Rights?

B. Time and date of general elections?

2. *Corporations (other than municipal).*

A. How organized?

B. Foreign corporations—how do business in North Dakota?

C. Limitation on issue of stocks and bonds?

D. Combinations:

a. Railroads?

b. Combinations to control price?

QUESTIONS

1. Under what conditions can foreigners vote in North Dakota?
2. Who are citizens? (See 14th Am. U. S. Constitution.)
3. At what elections can women vote?
4. What control has the State legislature over cities? (Art. VI.)
5. What control has the State legislature over North Dakota corporations? Over foreign corporations? Over railroads?
* What is a foreign corporation?
6. * Can North Dakota corporations "water their stock?" (Sec. 138.)
7. What combinations are illegal in North Dakota?
8. * What is meant by the "police power" (Sec. 134) of the State?
Give one example.
9. * What is meant by "eminent domain"?

LESSON 9

Education; Schools and Public Lands.—Read Articles VIII, IX, XIX, and Amendments V, VI, VIII, and IX of the North Dakota Constitution, and answer the following questions:

QUESTIONS

1. Why should public schools be maintained?
2. May part of the public money be used for sectarian schools?
3. What are the four sources of our Permanent School Fund?
Which of these four is the most important? (The grant of sections 16 and 36 makes a total of 2,250,000 acres.)
4. Will future losses make this fund smaller?
5. What are the sources of the State Tuition Fund? (Sec. 154.)
6. * What did this fund amount to last year? How much did your school receive?
7. May the State sell its coal lands?
8. Who has control of all school lands, and all moneys coming from the sale of these lands? How do they invest this money? (Sec. 162, Ams. 8 and 9.)
9. What is the minimum price of school lands? (Compare Enabling Act, Sec. 11.) * How high has it sold?
10. * How does the minimum price in our State compare with the price in older States?
11. Who appraises the school lands in each county?
12. How is this land then sold?
13. Does the State also rent land? On what terms?
14. Prepare a table showing, (a) Total land grants to public schools and to each State institution; (b) Acres sold; (c) Total price received; (d) Average price per acre. (See last report of Land Commissioner, Bismarck, North Dakota.)
15. Draw a map of North Dakota, and locate thereon each State institution, also indicate under each institution the size of its land grants, if any.
16. Does the subject of education occur in the Federal Constitution? How do you explain this fact?

LESSON 10

County and Township Organization; Revenue and Taxation; Public Debt and Public Works.—Read Articles X, XI, XII, and Amendment IV of the North Dakota Constitution.

QUESTIONS

1. What is the minimum size of a county in North Dakota?
2. Who may change the boundaries of organized counties?
3. What county officers are provided for in the constitution?
4. What county officers may not serve for more than four years in succession? Why is this?
5. What is the limit of State taxes (exclusive of interest on State debt)?
6. What is said about uniformity of taxation? Explain.
7. On what basis must property be valued for taxation?
8. How are railroads assessed? * Is the same method used in other States?
9. What other corporations are assessed in the same way?
10. What is the limit of the public debt of North Dakota?
11. * What is the State debt to-day?
12. What is the debt limit for a county? A township? A city? A school district? What are the exceptions to this rule?
13. Would a county, township, city, or school district spend too much and become bankrupt, were it not for this constitutional limitation?

LESSON 11

Militia; Impeachment and Removal; Miscellaneous; Prohibition.—Read Articles XIII, XIV, XVII, and XX of the North Dakota Constitution.

QUESTIONS

1. What is the difference between the militia and the active militia (National Guard)?

2. Who has the sole power of impeachment in North Dakota?
Of trial of impeachment?
3. What is said about child labor in the North Dakota Constitution?
4. May corporations use the blacklist in this State? What is a blacklist?
5. May married women own property in this State?
6. May intoxicating liquors be manufactured in this State? Sold here? Given away?
7. * What other States are prohibition States?

LESSON 12

Amendments.—Read the amendments to the North Dakota Constitution. Write in parallel columns suitable titles for these amendments and for the amendments to the Federal Constitution, beginning as shown below, and answer the following questions.

Part IV. Amendments

UNITED STATES	NORTH DAKOTA
I-X. Bill of Rights.	I. Lotteries.
XI. Jurisdiction of courts.	II. Voters.
XII. etc., to XV.	III. etc., to X.

QUESTIONS

1. Can lotteries operate legally in North Dakota?
2. What restriction on suffrage is imposed by Amendment II, first clause?
3. How may a prisoner in the State Penitentiary secure a pardon?
4. What public service corporations come within the provisions of Amendment IV? How are they to be assessed?
5. What State institutions are located by Amendments V and VI?
6. What change in Section 176 of the Constitution is made by Amendment VII?
7. What are the new provisions concerning school lands?
8. What change in Section 89 is made by Amendment X?

PART VI

THE STATE GOVERNMENT IN ACTION

CHAPTER XV

HISTORICAL

Location and Area.—North Dakota is situated almost midway between the Atlantic and Pacific oceans on the east and west, and between Hudson Bay and the Gulf of Mexico on the north and south. The waters from the east and northeast parts of the State drain into Hudson Bay; from the western and southern parts, into the Gulf. Between these two drainage areas is found a third area with no outlet to the sea. This is the region about Devils Lake, a large body of salt water.

The State comprises an area of 70,837 square miles, or about 45,000,000 acres. The 49th parallel forms its northern boundary, separating it from the Dominion of Canada. On the east the Red River of the North separates it from Minnesota. The southern and western boundaries consist of the State lines of South Dakota and Montana respectively. The State thus forms an almost perfect rectangle, 337 miles in length by 210 miles in width.

Topography.—The land surface of the State is divided into three rising steps, from east to west, namely, the Red

River valley, the middle plain, and the plateau of the Coteau du Missouri. The elevation of these steps above sea level is, approximately, 800, 1,600, and 2,400 feet, respectively.

The first step consists of the remarkably level plain known as the Red River valley. This strip of land is thirty or forty miles wide, and stretches across the eastern border of the State, sloping northward, the slope being about one foot to the mile. The lowest spot in the State is therefore at Pembina, the elevation above sea level there being 789 feet.

This plain rises on the west to meet the great middle plain of the second step, which averages some 800 feet higher. The slope leading to this plain is gradual in places, and inconspicuous, but at other places, as in the Pembina mountains, there is an abrupt rise to the new level. This middle plain contains the lake region of the State, especially in its northern part.

The third area comprises the highlands parallel to the Missouri River, and known as the Coteau du Missouri. This district comprises about half of the State. Its height varies from 1,800 to 2,700 feet, and reaches, in the summit of Sentinel Butte, a height of 3,350 feet, which is probably the highest point in the State. The southwest portion of the State contains the picturesque *Bad Lands*. "By far the most interesting feature of the unglaciated region and in fact the most interesting topographic feature in North Dakota," says the State geologist, "is the famous Bad Lands. . . . The Bad Lands are typically developed along the Little Missouri, and Medora is located in their midst.

The soft cretaceous clays and sands have been carved by running water into a multitude of steep-sided hills, isolated buttes, and an endless variety of fantastic forms. . . . Beauty and variety is added to the landscape by the diversity of color. The colors are arranged in broad bands



In the Bad Lands

along the faces of the bluffs—gray, yellow, black and red of every shade and tint, together with browns and pinks. The banded and many-hued bluffs, buttes, domes and pinacles are a characteristic feature of the Bad Lands and increase their attractiveness from a scenic point of view.”¹

Climate.—The rainfall of the State varies with each of

¹ Dr. A. G. Leonard, “Third Biennial Report, State Geological Survey of North Dakota,” pp. 132, 133. See also “Fifth Biennial Report,” p. 38.

the three topographic divisions. In the Red River valley it is ample for agricultural purposes, and often excessive. In the middle plain the rainfall comes almost entirely during the farming season and is adequate. In the western half of the State the rainfall is scant, except for purposes of grazing and dry farming. The temperature of the State



A North Dakota Wheat Field

fluctuates between widely separated extremes, from a maximum of 100 degrees to a minimum of -35 degrees, Fahrenheit. Although very low temperatures are common in the winter, yet the severity of the cold is greatly mitigated by the prevailing dryness of the air. Likewise in summer time, the excessive heat of the midday sun is not oppressive, owing to this same dryness of the atmosphere. The radiations of the nighttime offset the higher temper-

atures of the day, giving rise to the phenomenon of cool nights.

Resources.—North Dakota is a prairie State. Strips of timber are found only along the streams. One national forest is being developed in the Bad Lands. The soil of the State is adapted to farming, primarily to wheat culture. In the production of this crop the State ranks along with Minnesota and Kansas as one of the three famous wheat States of the Union. Among the other farm crops successfully grown to a large extent in the State are flax, oats, barley, corn, rye, clover, and potatoes. The mineral resources of the State, while largely undeveloped, are of unquestioned importance. Lignite coal is found throughout the western half of the State. Clays, valuable for tile, pottery, and dishes, abound. The sheep and cattle industry, once of great economic importance to the State, is declining in favor of farming and dairying.

The Native Inhabitants.—The Indians were the original inhabitants of North Dakota. The buffalo, deer, beaver, antelope, wild ducks, and geese, and other species of game made these great prairies, lakes, and coulees a coveted hunting ground. The Indians, like all other races of the globe, are a shifting and migratory people. Hence North Dakota has been the temporary home, if not the permanent abode, of many contending tribes of Indians. Many traces are left of a now almost obliterated people. "In the Dakotas," says a great scholar, "are hundreds of mounds, effigy mounds, embankments, an effigy of a man, one of a serpent and one of a turtle outlined with boulders, some other figures similarly outlined, trails of

bowlders, lines of bones, tepee circles of stone, and pictured rocks." ¹

The various tribes occupying the present territory of North Dakota, as far back as our historical records go, were nearly all members of two great Indian families,—the Sioux and the Algonquin. The Algonquins were represented by the Crees in the Turtle Mountain region. The Sioux were chiefly represented by two prominent tribes, the Grosventres in the northwest and the Mandans in the Missouri valley to the south. An historian, in writing of the Sioux, uses this language, "They are often regarded too, as the typical native Americans, physically strong and active, hunters and warriors by nature and necessity, shifting from place to place, but always free, always dominant, always significant." ²

Exploration.—The fur traders and the missionaries to the Indians were the first white men to explore the present territory of North Dakota. La Verendrye, a French fur trader and explorer, has left us a very early record of a daring journey of discovery and exploration. He entered the present limits of the State in the Turtle Mountains, perhaps the first white man, in the year 1738, and succeeded in reaching a point on the Missouri River near the mouth of the Knife River. But no permanent results followed his visit. The Lewis and Clark expedition sent out by the Federal government, journeying from St. Louis to the Pacific coast, by way of the Missouri and Columbia Rivers, spent the winter of 1804 and the spring of 1805 in camp at

¹ Harlan I. Smith, in "State Historical Society of North Dakota Collections," Vol. I, p. 81.

² Farrand, "American Nation; Basis of American History," p. 133.

Fort Mandan near the mouth of the Knife River. These men gave to the world a detailed record of the country along the great river, its climate, its game, its Indian inhabitants. Their journal makes mention of the Jacques (James), and the "Du Chien or Dog" (Cheyenne) Rivers, and of Bon Homme Island. These names all indicate that the French had already been there. Near the site of Bismarck their journal reports a "bluff with a stratum of black, resembling coal."

Soon after this visit of Lewis and Clark, traders began to establish posts along the rivers, to deal in furs with the Indians.

Settlement.—"The first actual settlement made by a white man in North Dakota was in 1780 at Pembina, by a Frenchman in the employment of the Hudson Bay Company." ¹ Here in 1812 Lord Selkirk established one of his colonies (bringing it actual settlers, not fur traders), thinking the land was under British dominion. The post had a checkered history. It was destroyed, rebuilt, and finally, upon the discovery that it was not on Canadian soil, it was removed to Canada. The original settlers fled to more peaceful regions, leaving the land once more to the Indians and traders. The hardy French fur traders intermarried with Indian women, and thus this settlement came to be one consisting largely of mixed bloods. A candidate for office in the early 60's visited this place and wrote of it as follows: "We then made another trip of four hundred miles northward to the half-breed settlement on the Pembina River in North Dakota. Here young Joe Rolette

¹ Smith and Young, "History and Government of South Dakota," p. 55.

took me in hand, and in a wooden two-wheeled Red River cart, harnessed with raw hide to a trotting ox, we traveled for a week among the settlers.”¹

Fort Pierre was built in 1829 near Pierre, South Dakota, by Pierre Choteau. Under his direction the first steamboat made a trip up the Missouri River in 1830. But the land of Dakota was not yet surveyed, and not open to legal settlement for many years. Indeed, not till 1851 was a treaty made with the Sioux Indians, by which a small strip of land in southeastern Dakota was legally placed in the control of the whites. This treaty was followed by others, securing for the whites, piecemeal, the coveted territory, till finally almost the whole of North Dakota and South Dakota was open to white men.

The Indian massacre at New Ulm, Minnesota,² in 1862, followed by smaller Indian troubles in Dakota, did much to retard white settlement on Dakota soil. These massacres came during the Civil War, when the government could spare but a few soldiers to protect the pioneer settlers. Lack of transportation facilities was the second great factor in preventing the growth of population in this new region. With the overcoming of these two obstacles, by making treaties with the Indians and by building railroads, increase in population has gone on rapidly.

The first railroad to touch Dakota soil was the Northern Pacific. It was aided by a land grant of some six million acres in North Dakota. On January 1, 1872, it reached Fargo; the next year it reached Bismarck. In that year

¹ Armstrong, "The Early Empire Builders of the Great West," p. 57.

² McVey, "Government of Minnesota," p. 23.

(1873) also, the Dakota Southern was pushed from Sioux City to Yankton. Not till 1880 did the Great Northern cross the Red River at Grand Forks.

Dakota Territory.—Prior to 1861, Dakota Territory, embracing the present States of North and South Dakota, had been under many different governments. Most of Dakota Territory was purchased from France in 1803, under the treaty known as the Louisiana Purchase. This covered that section only of the territory represented by the “Mississippi River and its tributaries.” Not till the international boundary line was corrected by the agreement of 1818 was the Red River valley, down to the 49th parallel, placed under American instead of British dominion. Eastern Dakota (east of Missouri and White Earth rivers) has been part of the following Territories:

Territory of Missouri, 1812.

Territory of Michigan, 1834.

Territory of Wisconsin, 1836.

Territory of Iowa, 1838.

Territory of Minnesota, 1849.

“Mandan Territory,” as the part of Dakota west of the Missouri and White Earth rivers was once known, was included in the Territory of Missouri in 1812, and in 1854 was attached to the Territory of Nebraska.

In 1858 Minnesota became a State, with boundaries reduced to their present position, leaving eastern Dakota without government, without name, and without legal existence. Congress passed the Organic Act for Dakota Territory in 1861, and on March 2, 1861, on the eve of retiring from office, President Buchanan signed it.

As a Territory, Dakota had the usual form of government common to Territories. That is, the President appointed the executive and judicial officers: the inhabitants themselves elected their legislative branch. Abraham Lincoln appointed the first governor for the young Territory. His choice was Dr. William Jayne of Springfield, Illinois, Lincoln's home town. The first legislature of Dakota Territory was composed of a Council of nine men, and a House of thirteen men. The capital was Yankton till 1883. In 1883 the capital was changed to Bismarck, a more central location.

Dakota Territory soon began to clamor for admission to the Union as a State. This matter was delayed for many years, however. The period of territorial life lasted twenty-eight years, or from 1861 to 1889. With the passing of the twenty-eighth birthday, Dakota Territory was ready, in the judgment of Congress, to join the family of full-grown States. During these years of minority, population had increased as follows:

POPULATION DAKOTA TERRITORY

<i>Year</i>	<i>Population</i>
1860	4,837
1870	14,184, increase of 210 per cent.
1880	135,177 " " 850 " "
1889	473,954 " " 250 " "

And the wide-spreading Territory had already established the following institutions, anticipating admission to the Union as two separate States: a school of mines, two penitentiaries, a reform school, two asylums for the insane, an

agricultural college, two normal schools, and two universities.

The Enabling Act.—Congress passed an Enabling Act for North and South Dakota February 22, 1889. An "enabling act" is a law of Congress, authorizing or enabling a Territory to draw up and adopt a constitution for itself, and to enter the Union upon meeting the requirements imposed by the act. Our enabling act applied to four proposed States, and its blanket nature is shown by its title, which is as follows: "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States."

Very much of the debate in Congress over this Act pertained to the price at which the States should be allowed to sell their land grants. Before this time the price had run from 50 cents to \$5 an acre. Some speakers favored \$6 an acre. The price was finally set at a minimum of \$10 an acre.

The chief provisions of the Enabling Act are as follows:

(1) Provision for a constitutional convention at Bismarck.

(2) Religious liberty to be maintained.

(3) A joint commission of the two States, North Dakota and South Dakota, to arrange equitable division of territorial debt and territorial property.

(4) A magnificent land grant.

The land grant is worthy of especial mention. It was for

the support of State institutions, and for the maintenance of common schools. The grant for the purpose of supporting common schools was a princely domain, amounting indeed to almost half the amount previously given by the Federal government to encourage railroad building in North Dakota. The common school grant was sections 16 and 36 in every township, or a total of two and a half million acres. About six hundred thousand acres more were given for the support of an agricultural college, State university, school of mines, normal schools, and the various State institutions. A very important proviso was placed in the Enabling Act, namely, none of the land should ever be sold for less than \$10 an acre. When we compare this price with the price received by the older States we see the wisdom of this provision. For instance, Rhode Island received 120,000 acres for an agricultural college, which was sold for \$50,000, or 42 cents an acre. Iowa received for her agricultural college 240,000 acres, which she sold for \$500,000, or \$2.08 an acre.¹ Under the terms of the Enabling Act, North Dakota must get as much for one acre as Rhode Island did for twenty-five.

Constitutional Convention.—In accordance with the Enabling Act, the constitutional convention was held at Bismarck, beginning July 4, 1889. The convention was composed of seventy-five delegates, duly elected and empowered to perform their important work of forming a constitution. They spent five weeks drafting a constitution for the new State. The terms of the Enabling Act were

¹ Donaldson, "Public Domain," 47th Cong., 2 Sess., House Doc. 45 part 4, Serial No. 2158.

strictly complied with in regard to safeguarding religious liberty, in dividing debts and property with South Dakota, and in regard to the disposition and price of the land grant.

There are two kinds of State constitutions. One is short, containing the bare framework of principles. The other is long, containing not only the principles, but much of the detailed program for carrying these principles into effect.

These two plans were before the North Dakota convention, and each had strong champions. Judge T. M. Cooley of Michigan, author of a much-read and scholarly book on constitutional law, favored the short constitution. He addressed the convention and used these words, "Do not, in your constitution-making, legislate too much. Leave something for the legislature. You have to trust somebody in the future, and it is right and proper that each department of the government should be trusted to perform its legitimate functions." Governor Melette, the last governor of Dakota Territory, favored exactly the opposite plan. He said, "If you know the proper thing to embrace in a constitution, the more there is in it the better. One of the greatest evils is excessive legislation—the constant change of laws every two years, and the squabble and debates over the different questions that constantly arise." Whether wisely or unwisely, the second plan was followed, and North Dakota secured a constitution some twenty-eight thousand words in length. The convention finished its labors on August 17, and on October 1 the people voted on the constitution. It was ratified by a vote of three to one. Article 20, dealing with prohibition, was submitted separately, but also carried, and thus became a part of the

constitution. This constitution we have already studied in an earlier part of this work.

State of North Dakota.—President Harrison was satisfied that the constitution of North Dakota complied strictly with the terms set by Congress, and therefore on November 2, 1889, he issued his proclamation of admission, and the admission of the State into the Union was complete.

Amendments to Constitution.—Several hundred amendments have already been proposed to the constitution. Only a small proportion of them have been adopted. Few amendments are actually adopted because the process of adoption is very slow and very difficult. We may illustrate the three steps in adopting an amendment in this way: (1) The proposed amendment passes the legislative assembly in an odd-numbered year, say, January, 1907. (2) It then comes up and passes the legislative assembly two years later, in January, 1909. (3) It then comes to its final test—goes before the voters in the regular fall election, twenty-two months later, November, 1910. This is the process and it requires at least three years and nine months. About one amendment in thirty survives the ordeal.

Growth of the State.—The growth of the State in population and in industry has been very rapid. Increase in population is shown in this interesting table:

GROWTH IN POPULATION, NORTH DAKOTA

<i>Year</i>	<i>Population</i>
1880 . . .	36,909
1890 . . .	182,719, increase in 10 years, 400 per cent.
1900 . . .	319,146 “ “ “ “ 75 “ “
1905 . . .	437,070 “ “ 5 “ 36 “ “

No other State in the Union has such a mixture of sturdy races as has North Dakota. The ancient and virile Teutonic stock is represented by the Anglo-Saxons, the Scandinavians, the Germans, and the Germanic-Russians. North Dakota has long stood first among the States in her high percentage of foreign born. The percentage of foreign born at different times is shown below:

PER CENT OF FOREIGN BORN, NORTH DAKOTA

1880	49.5 per cent.
1890	44.6 " "
1900	35.5 " "
1905	21.0 " "

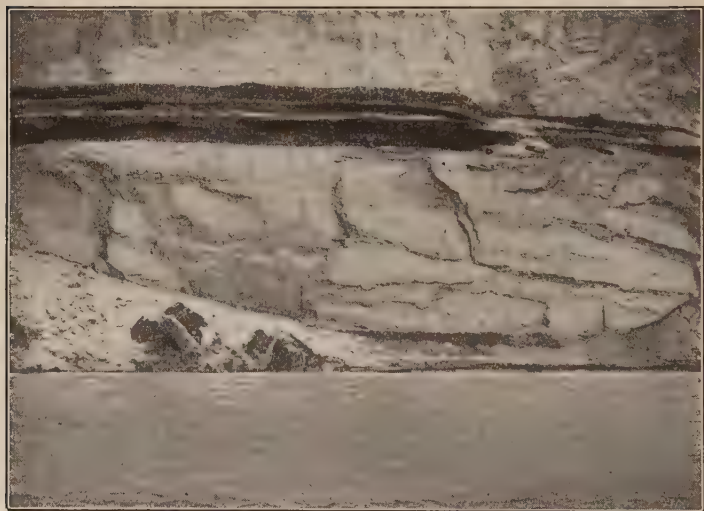
The elements making up this foreign-born population are shown in this table:

EIGHT LEADING NATIONALITIES, 1890 AND 1900

	Rank 1890	Per cent. of total population		Rank 1900
		1890	1900	
Norwegians	1	14.1	9.4	1
Canadians	2	12.6	8.8	2
Germans	3	4.9	3.6	4
Swedes	4	3.0	2.6	5
Russians	5	2.1	4.7	3
English	6	1.8	0.9	7
Irish	7	1.6	0.8	8
Danes	8	1.5	1.2	6

In railroad construction the State has enjoyed a truly remarkable growth. The State had in 1910 four trans-continental lines, namely, the Northern Pacific, the Great Northern, the Minneapolis, St. Paul, and Sault Ste. Marie, and the Chicago, Milwaukee, and St. Paul. There was also

a network of small branch lines covering the north and east two thirds of the State. The railroad mileage in 1908 was 4,920 miles. With the spread of the railroads has gone the extension of rural and long distance telephones (11,398 miles in 1908), the rural free delivery of mail (331 routes in 1908), the construction of farmers' coöperative elevators, creameries, etc.



A North Dakota Coal Vein

The mineral resources of the State remain as yet almost unscratched. In 1907, however, over three hundred thousand tons of coal were mined. This is a good beginning. The rich clays of the State are being exploited for brick, and to some extent also for the manufacture of tile, pottery, and dishes.

With less than one fourth of her land under cultivation

(10,509,414 acres in 1908) North Dakota already ranks among the great agricultural States of the Union.

QUESTIONS ON THE TEXT

1. Describe the physical features of North Dakota,—area, boundaries, drainage.
2. Describe the topography of North Dakota.
3. What and where are the Bad Lands?
4. Discuss the climate of the State—rainfall, temperature.
5. Describe natural resources.
6. What Indian families and tribes occupied Dakota Territory? What were their habits?
7. What remains have they left?
8. Name the early explorers of Dakota. Dates and results of their work.
9. What was the occupation of the fur trader?
10. Where was the first settlement in North Dakota? Date? By whom?
11. Give an account of Lord Selkirk's Pembina colony.
12. Who was Pierre Choteau?
13. What two factors retarded the settlement of Dakota?
14. How were these difficulties overcome?
15. When did the railroads reach Fargo and Grand Forks?
16. Dakota has been under what territorial government?
17. When was the Organic Act passed?
18. Describe the territorial government of Dakota Territory.
19. How long did Dakota remain a Territory? What was the population each decade?
20. What public institutions did the Territory establish?
21. What is an enabling act? Give title and four provisions of the North Dakota Enabling Act.
22. Show the wisdom of these provisions.
23. Describe the constitutional convention and its work. What plan of constitution was finally adopted?
24. When was North Dakota admitted to the Union?
25. How may the constitution be amended? Illustrate the process.
26. What has been the growth of the State—population—trans-

portation and communication facilities—development of natural resources—agriculture?

27. Discuss the population of North Dakota from the standpoint of races represented.

QUESTIONS SUGGESTED BY THE TEXT

1. Give an account of the Hudson Bay Company. Of the Northwestern Fur Company. What relation did each have to the early settlement of North Dakota?
2. Give an account of Lord Selkirk's colonies.
3. Give an account of the settlement and growth of some North Dakota village or city.
4. Give an account of a rural telephone line.
5. Give an account of a farmers' elevator company.
6. Give an account of a farmers' coöperative store; bank; insurance company; creamery.
7. Draw a race-map of your city, school district, or county, locating and naming the various races living there.
8. Compare immigration to North Dakota with immigration to Massachusetts (or New York), as to (a) number, and (b) character of immigrants.

REFERENCES

- "Collections of North Dakota Historical Society," Biennial Publication, Bismarck (1906-).
- Armstrong, "Early Empire Builders of the Great West," pp. 1-204. "North Dakota Blue Book."
- For Topography, climate, mineral resources, description, and views of Bad Lands, etc., see "Reports of North Dakota Geological Survey," Biennial, Bismarck (1900-).

CHAPTER XVI

THE EXECUTIVE

"He (the governor) shall expedite all such matters as may be resolved upon by the legislative assembly and shall take care that the laws be faithfully executed." North Dakota Constitution, Sec. 75.

The Chief Executive.—The State, like the Nation, has the three branches of government: the executive, the legislative, and the judiciary. The executive of the nation is one man, the President. The executive of the State is broken up into many parts, the governor being chief executive. The executive or administrative departments make up the rest of the State executive branch. There are eight of these departments, elected like the governor, and they are the following: a secretary of state, an auditor, a treasurer, a superintendent of public instruction, a commissioner of insurance, three commissioners of railroads, an attorney-general, and a commissioner of agriculture and labor. Besides these there are various boards, commissioners, etc.

The chief executive power of the State is vested in the governor. He must be at least thirty years of age, and a resident of the State. He is elected by the qualified voters for a term of two years, and is eligible for reelection. A governor often serves two terms, but very rarely is elected for three terms. The salary is \$5,000 a year, and

in addition to this the State furnishes him the use of an executive mansion.

Powers and Duties of the Governor.—The duties of the governor are summed up in these brief words of the constitution, "He shall take care that the laws be faithfully executed." In reality he exercises a variety of powers, classified as follows:

1. Legislative Powers.—The governor sends a written *message* to the legislative assembly, recommending needed legislation, and reviewing the work and finances of the State government. He may convene the legislature for a special session on "extraordinary occasions." The principal legislative power in his hands, however, is the *veto* power. This is worthy of our careful examination. When a bill has passed the legislature the governor may veto it (i. e., refuse to sign it), and return it with his written objections. Two thirds of the members-elect in each house may pass it over the governor's veto, but this is a very hard thing to do. The governor must either sign or veto the bill, no "pocket veto" being possible. If he keeps the bill three days, it becomes a law without his signature. If the legislature has adjourned, he may keep the bill fifteen days, and then it becomes a law, unless he files written objections to it with the secretary of state. The governor may select individual items in appropriation bills and disapprove of them. These items are then in the same condition as a vetoed bill, while the rest of the bill becomes law.

2. Executive Powers.—The general executive powers of the governor may be reduced to three, namely, Appointing; Military; Law Enforcement.

A. Appointing.—Compared with the chief executive of the nation, the governor has very small powers of appointment. He appoints no court judges, no cabinet officers, and very few militia officers. His appointing power extends to the trustees of all State institutions (now fourteen in number), to about twenty boards and commissions, and to the adjutant general in charge of the militia. He may also appoint for his personal staff nine aids-de-camp, with the title of colonel, and six with the rank of lieutenant colonel. It can be seen from the foregoing that while the number of persons appointed by the governor is not large, varying from one hundred and fifty to two hundred, yet the share of the administrative work of the State placed in their hands is very large indeed. Certain vacancies in office are filled by appointment of the governor, as provided by law. If the law has provided no mode of filling a vacancy, the governor is empowered by the constitution to fill such vacancy.

B. Military.—The governor is commander in chief of the militia of the State. In case of tumult or riot he has power to call out the military forces of the State.

The *militia* of the State consists of every able-bodied male between the age of eighteen and forty-five years. The *organized militia*—the part armed and drilled ready for fighting—constitutes the North Dakota National Guard. A law of Congress requires that the “organization, armament, and discipline” of the National Guard shall be the same as that of the regular army. To standardize the National Guard the Federal government furnishes it arms, uniforms, and equipment, and also provides for its partici-

pation in the regular army encampments and maneuvers. Money is appropriated from the national treasury to promote the efficiency of the National Guard in each State.

The governor appoints the officers comprising the staff (inspector and judge-advocate-general, chief of supply, chief of engineers, etc.); while the lower line officers (such as captains, lieutenants, etc.) are elected by the men themselves in the National Guard. The smallest division of the National Guard, as of the army, is the company, consisting of forty-two privates in the charge of three commissioned officers, one captain, one first lieutenant, and one second lieutenant.

C. Law Enforcement.—The governor's oath imposes on him the duty of enforcing the law. But what are his powers of law enforcement? How can lawbreakers be brought before the courts? Very seldom is it necessary to use the military force of the State to quell disturbances. Most lawbreaking is of a less spectacular kind. To illustrate. The prohibition law is sometimes violated. The State has an officer in each county to enforce State laws—the State's attorney. If he is informed by any person of the violation of the prohibition law, or knows himself of such a violation, it is his duty to have the sheriff arrest the lawbreaker and have him brought to trial before the proper court. If he is unable to do this or neglects or refuses to enforce this law, the attorney-general must proceed with the matter, and may also have the State's attorney tried before a court and removed from office. The governor must act through this machinery—the various State's attorneys and the attorney-general. In this way must he secure law

enforcement. If the attorney-general refuses to do his duty, there are two things the governor may do; he may get an order (a *mandamus*) from the supreme court, which is a command for the officer to do his duty. If he refuses to obey, he is guilty of contempt of court, and will be fined or imprisoned. Or the governor may proceed in the proper court to have the attorney-general ousted from office for nonperformance of duty. We may add, to make the record complete, that if the *governor* himself refuses to obey the law, he too can be removed from office, upon being impeached by the house of representatives and convicted by the senate. Hence the machinery of law enforcement is complete, although somewhat slow and clumsy.

Rewards.—The governor is empowered to offer a reward, not exceeding \$1,000, for the capture of any criminal fleeing from justice.

3. Social.—A large part of the governor's duties are social. He must attend and speak at important meetings, must dedicate public buildings, and visit interstate and national gatherings of all kinds. These duties make heavy demands upon the governor's time and energies, but nevertheless cannot be shirked.

4. Miscellaneous.—A duty of the governor, not much discussed in the papers of the day, but of great importance to the State, is his committee work. The governor is a member of the following eleven boards and committees: Equalization, University and School Lands, Trustees of Public Property, Historical Society, Emergency Commission, Auditing Board, Tuberculosis Sanitarium Board, Banking Board, Board of Pardons, State Conservation

Commission, High School Board. The work of these boards represents some very vital parts of the executive work of the State. How shall certain great corporations be assessed? That depends solely on the Board of Equalization, of which the governor is chairman. Shall a certain prisoner be hanged, imprisoned for life or pardoned? That depends on the Board of Pardons, of which the governor is chairman. As the important work of Congress is done by committees, so also is much important administrative work of the State done by committees.

The law of the State makes the governor the sole official organ of communication with other States.

Lieutenant Governor.—The lieutenant governor has the same qualifications as the governor. His salary is \$1,000 a year. In case of the death or disability of the governor the powers and duties of the office devolve upon the lieutenant governor. He is president of the senate, but has no vote, except in case of a tie. The senate has vested in him the important duty of choosing all committees of the senate, just as the speaker of the house chooses all house committees. This is a very important power.

QUESTIONS ON THE TEXT

1. State the general executive power of the governor.
2. Compare the Federal and State executives.
3. Name the elective executive departments in our State.
4. Give qualifications, term, and salary of the governor.
5. Classify the powers of the governor (four classes).
6. State in full his powers in class "1."
7. Has the governor the power of "pocket veto"?
8. Classify the general executive powers of the governor. Illustrate each class.

9. How many persons does the governor appoint?
10. Explain in full the militia system of our State. Distinguish between militia and National Guard.
11. How may the governor proceed to enforce laws?
12. Give examples of the social duties of the governor.
13. State in full the miscellaneous duties of the governor.
14. What are the functions of the lieutenant governor?

QUESTIONS SUGGESTED BY THE TEXT

1. Who is governor of North Dakota? Lieutenant governor?
2. Give an account of a governor's "reward" leading to the capture of a criminal.
3. Name the members of the committee on appropriations as selected by the president of the senate.
4. Has the governor the pardoning power?
5. Make a table showing (a) candidates for governor, last election, and (b) vote for each candidate.
6. Select one State board and describe its work minutely.
7. In what way can the governor most influence for good the government of the State?
8. What qualities make the best governor?
9. To what extent is the governor responsible for lawbreaking in your county?

CHAPTER XVII

THE EXECUTIVE (CONTINUED)—DEPARTMENTS AND INSTITUTIONS

Executive and Administrative Departments.—The full State executive consists of the governor as chief executive, and in addition, eight elective departments and some fifty or more boards, commissioners, etc.

Eight Executive Departments.—The eight departments are provided for in the constitution, and therefore may be considered as a permanent part of our State government. The qualifications for office in any of these departments are: (1) age, twenty-five years or over; (2) a citizen of the United States. The term of office is two years. The salary is the same for each department, \$3,000, with the exception of the attorney-general, who receives \$3,600, and the three railroad commissioners, who receive \$2,000 each. The eight departments and their duties are as follows:

1. State.—The secretary of state has charge of the records and documents of the State. These records must be accurate, and must be preserved forever. He also has charge of the State seal which must be affixed to certain important papers to give them an official character. Candidates for the primary election nomination to Congress or to a State office file their petitions with him. He certifies election returns, and serves on several very important

boards. In case of the death or disability of both the governor and lieutenant governor he serves as governor of the State.

2. Auditor.—The auditor superintends the fiscal affairs of the State, and may indeed be called the bookkeeper of the State. It is by his order that money is paid out by the State treasurer. The auditor must report to the governor an accurate account of the revenues and expenditures of the State. A great deal of statistical work falls to this office, since the State board that assesses the railroads and telephones of the State depends on the auditor for the statistics on which to base its work. He also serves on the board dealing with the rental, sale, and management of the State's public lands, a board which has the tremendous financial responsibility of administering money and lands amounting to forty million dollars.

3. Treasurer.—The State treasurer, like the treasurer and sheriff of a county, is limited to two consecutive terms of service. This is one check upon any possible dishonesty. He must give a bond of \$500,000. His duty is to keep in his charge all moneys of the State. For all money received he gives duplicate receipts. And he pays out no money except on a signed warrant of the auditor. Thus auditor and treasurer are a check upon each other. The State does not possess a "strong box," as does the Federal government, for the safe-keeping of its moneys. Instead, the money is distributed over the whole State, being deposited in banks which furnish adequate security.

4. Education.—The superintendent of public instruction supervises the public school system of the State. His duty

is to standardize and render more efficient the whole system of common school education. He prepares the examination questions for use in county teachers' examinations. He issues and may revoke State certificates. He prepares the course of study for the common schools. Rules for the regulation of teachers' institutes are prepared by him, and the conductors of these institutes are chosen by him in consultation with the county superintendent. He coöperates in various ways with county superintendents and strives, with their assistance, to reach and benefit every school in the State. He furnishes architectural plans for new schoolhouses, with proper heating, ventilating, and sanitary provisions, free of charge, to school districts desiring to build.

5. Insurance.—It is the duty of the commissioner of insurance "to see that all laws of this State respecting insurance are faithfully executed." To protect the public against bogus and fraudulent insurance companies, it is necessary to have an expert official give his time to this one subject. All insurance companies wishing to do business in this State must first procure the necessary licenses or "certificates," as they are called, and must make a clean showing as to their financial standing. The commissioner publishes reports showing the standings of the various companies. He must also collect the tax on the insurance companies— $2\frac{1}{2}$ per cent. of the gross amount of premiums received in the State during the preceding year—before he can issue the annual certificates.

6. Railroads.—The State railroad commission consists of three members. Their duty is to see that the State laws

governing railroads are obeyed; that railroads do not discriminate between shippers and between different towns similarly situated, and that prompt and efficient service be maintained so far as is reasonable. Of course that part of the railroad business which crosses the State line becomes thereby interstate commerce and is under Federal control only. The commission has power to receive complaints, hold meetings in different localities for the hearing of evidence, and to fix rates. The district courts of the State are empowered to issue the necessary decrees to enforce the rulings of the commission. The rulings must be reasonable.

7. Law.—The attorney-general appears for and represents the State before the supreme court. He defends the State in actions in which it is a party. He must give advice, when asked, to the other State officials, and to the State's attorneys in the counties. "Trusts, pools, and combinations" are singled out by law and given into the watchful care of the attorney-general. In case such a combine fixes prices contrary to law, he is to bring suit for forfeiture of its charter, rights, and franchises, and for a dissolution of its corporate existence. The prohibition law also depends largely on this official for its full enforcement. Two assistants are provided for this department, that the work of law enforcement may be more thoroughly done.

8. Agriculture and Labor.—The commissioner of agriculture and labor has the twofold duty of promoting agriculture in the State and improving the welfare of labor. He collects and publishes statistics concerning the hours and wages of labor, and concerning labor unions. He pro-

motes immigration into the State, thousands of dollars being used annually for this purpose. He makes exhibits at local, State, and national fairs, setting forth to the world the agricultural and industrial resources of the State. In these ways he encourages the settlement of the State and the erection of new homes within its borders.

Boards and Commissions.—An increasing amount of the State's work is being done by boards, commissioners, inspectors, examiners, and experts in various fields. The constitution has limited the size of the State legislature, and of the supreme court, but there is no limit to the number of expert administrative boards. The number of boards, commissioners, etc., is growing; there were 19 in 1890; 26 in 1900; 61 in 1910. This increase means that the State is now doing for us many things which we formerly did for ourselves or left undone. Formerly, for example, we had the privilege of going to the meat market and buying embalmed beef in the shape of sausage and bologna, and eating and dying thereof. Now we have pure food inspection. *The Pure Food Commissioner*, in connection with the Agricultural College at Fargo, by means of expert chemists, examines foods, paints, drugs, liquors, etc., to detect and punish adulterations and false labeling. Formerly, when the farmer's sheep and cattle began to die of a contagious disease, he awaited, as a matter of fate the death of his own and his neighbors' live stock. Now the State provides a *Live Stock Sanitary Commission*, which by means of dipping tanks and other precautions stops at once the spread of disease among farm animals. Formerly people living in villages and cities often suffered scourges of ty-

phoid fever, no one being able to prevent the many deaths. Now the water or the milk causing the disease is examined in the *State Public Health Laboratory* in connection with the State University at Grand Forks, and the warning is given in time. This laboratory is of service to the doctors of the State in making free of charge a correct diagnosis of contagious and other diseases.



State Public Health Laboratory

Space is lacking to describe the work of all these boards, or even to give all their names in this place. A complete list is found in Appendix E, near the end of this book. The work of the State Board of Equalization is described in detail on page 305; the work of the Board of University and School Lands on page 303.

These boards are of three distinct types, depending on their manner of selection: (1) *Appointive boards*, appointed by the governor. An example of this type is the Board of

Trustees of the State Penitentiary, the five members of this board being appointed by the governor. (2) *Ex officio boards*, made up of persons who are members by virtue of their office. An example of this type is the State Board of Equalization, composed of the governor, auditor, treasurer, attorney-general, and the commissioner of agriculture and labor. (3) *Mixed boards*, composed of some ex officio members and some appointive members. An example of this type is the State Board of Health, made up of the attorney-general as chairman ex officio, and two other persons chosen by the governor. One must be a doctor, and is known as the Superintendent of Public Health.

State Institutions.—There are (1910) fourteen State institutions. They are each governed by a board of trustees appointed by the governor. The typical board consists of five men, with a term of office of four years, and a salary of \$3 a day and expenses for the time actually put in. All of these institutions, except three, have a “land grant.” That is, the State set aside for each a certain number of acres of the public land given by the Federal government to the State. The grant was all used up before all the institutions had been established. The following table shows the principal facts about the various institutions:

STATE INSTITUTIONS

NAME, LOCATION, AND LAND GRANT, IF ANY

University and School of Mines . .	Grand Forks	126,080 acres
Agricultural College	Fargo	130,000 “
Penitentiary	Bismarck	
Insane Asylum	Jamestown	20,000 “

Deaf and Dumb School	Devils Lake	40,000 acres
Reform School	Mandan	40,000 "
Normal	Valley City	50,000 "
Normal	Mayville	30,000 "
Feeble-Minded Institute	Grafton	
Soldiers' Home	Lisbon	40,000 "
Blind Asylum	Bathgate	30,000 "
State Normal and Industrial School	Ellendale	40,000 "
School of Forestry	Bottineau	
Science School	Wahpeton	40,000 "

The State Capitol, while not an "institution," yet has a land grant of 82,000 acres, to be used towards paying expenses of constructing a capitol building.

These various institutions are located, not by law, but by the State constitution itself. No new institutions can be added to the list without amending the constitution. Thus an amendment to the constitution to locate a State normal school at Minot passed the legislature in 1907 and again in 1909, as the law requires.¹

The running expenses of the State institutions amount to \$1,000,000 or over, a year. This money comes from two principal sources: from general taxation; and from the income of the land grants (*rent* of land or *interest* on the money where the land has been sold). For erecting new buildings the State levies a tax. The United States government helps bear a large part of the running expenses of the Agricultural College, it being a policy of the government to foster scientific agriculture in every State.

The State maintains, as shown above, seven higher educational institutions. Their aim is to serve the State in

¹ This was submitted to the people in the regular election, November, 1910.

various ways, duplicating work as little as possible. Thus the State University and School of Mines furnishes (1) a liberal education in all the branches of higher learning, leading to general culture and preparing for good citizenship; (2) special professional training for teachers in city schools, lawyers, doctors, engineers (civil, mechanical,



State University, Grand Forks

electrical, mining, and sanitary), and for bankers, journalists, consuls, and business men generally. The Agricultural College furnishes (1) training to young men and women in such branches of learning as are related to agriculture and mechanic arts; (2) special professional training in agriculture, animal husbandry, farm crops, biologic science, chemical science, domestic science, veterinary science, pharmacy, mechanical and civil engineering. Both the University and Agricultural College have four year courses of study, i. e., courses running four years beyond the high school course. The other schools have shorter courses, as follows:

The normal schools have a two-year course above the

high school grade, and furnish training of such a nature as to equip the young man and woman for teaching in the common schools of the State. The Academy of Science furnishes instruction in science, the object being to train skilled workmen in the most practical phases of applied science. This course may extend three years beyond the



Agricultural College, Fargo

high school course. The "State Normal and Industrial School," as the school at Ellendale is especially called, provides instruction in wood and iron work and in general manual training, and in domestic economy, such as cooking, sewing, etc. The School of Forestry is an agricultural high school, emphasizing especially the subjects of forestry and horticulture.

The work of the other institutions is indicated by their names. They are such institutions as are to be found in most of our neighboring States.

QUESTIONS ON THE TEXT

1. Name the parts of the State executive.
2. Name the elective departments.

3. Give in detail the work of each of the eight departments.
4. Describe the board system of our State, and its growth.
5. Give the work of three boards or commissions.
6. Make out a list of all the present boards, commissions, etc.
7. Name and describe three types of boards.
8. Give name, location, and land grant of each State institution.
9. What is the source and object of the land grant?
10. What is the work of the University? The Agricultural College?
11. State the objects of the other educational institutions.
12. How are State institutions supported? What do they cost?
13. How are these institutions governed?

QUESTIONS SUGGESTED BY THE TEXT

1. Describe in detail the work of any State board. (See printed report of board.)
2. Name the members of the board of equalization. At what figure did they assess the telephone lines and railway lines in your county last year? (See their last annual report.) What other property in your vicinity did they assess?
3. What is the State legislative reference library? Show the great value of its work.
4. Should the State have more boards and commissions? Is administrative work becoming more expert in its nature?
5. Should experts be appointed or elected? Why?
6. If appointed, should they be under civil service rules?

REFERENCES

1. "North Dakota Blue Book" (published biennially by the secretary of state, Bismarck).
2. Reports published by the State:
 - a. Governor's Message. Biennial.
 - b. Secretary of State's Report. Biennial.
 - c. Treasurer's Report. Annual.
 - d. Auditor's Report. Biennial.
 - e. Superintendent of Public Instruction Report. Biennial.
 - f. Railroad Commissioners' Report. Annual.
 - g. Insurance Commissioners' Report. Annual.

- h. Commissioner of Agriculture and Labor Report. Biennial.
- i. Attorney-General's Report. Biennial.
- j. Reports of State Institutions. Annual.
- k. Miscellaneous Reports.
 - State Examiner. Annual.
 - Board of Equalization. Annual.
 - State Veterinarian. Annual.
 - Agricultural College Experiment Station. Annual and Special.
 - Land Commissioner. Biennial.
 - State Engineer. Biennial.
 - Board of Pardons. Biennial.
 - Board of Health. Biennial.
 - Adjutant General. Annual.
 - State Geological Survey. Biennial.
 - State Historical Society. Biennial.

CHAPTER XVIII

THE LEGISLATURE

"Sec. 25. The legislative power shall be vested in a senate and house of representatives."

"Sec. 26. The senate shall be composed of not less than thirty nor more than fifty members."

"Sec. 32. The house of representatives shall be composed of not less than sixty nor more than one hundred and forty members." North Dakota Constitution.

The legislative assembly of the State, like Congress, is composed of a senate and a house of representatives. A biennial session is held at Bismarck, the state capital, in each odd-numbered year. The date of meeting is the first Tuesday after the first Monday in January. The session cannot exceed sixty days in length.

Members.—The members are elected by the qualified voters in the regular November elections in the even-numbered years. The number of members cannot exceed one hundred and ninety, the limit set by the constitution. The senate is limited to fifty members; the house to one hundred and forty. Each senator is elected from a senatorial district, comprising one county or a fraction of a county. Each of these districts is allowed one, two, or three representatives, depending upon its population. The legislature has the power to redistrict the State at any regular session.

The qualifications of members are not the same for the two houses. A senator must be at least twenty-five years old; a representative twenty-one years old. Both must be citizens, and must be residents of the State for at least two years. The term of the senator is four years; of the representative, two years. Thus the house is a "new" house every two years, while the senate is half new and half "hold-over." In this way the legislature is sure to have a body of seasoned men at every session. The pay is the same for all members, \$5 a day, and 10 cents a mile for mileage in traveling to and from the capital by the usual route.

The *quality* of our average legislature—average age of members, education, occupation, nationality, etc., can be seen by consulting Appendix F, near the end of this book. North Dakota more than once has had one house of the legislature composed of members a majority of whom were foreign born—a record which few States, if any, can equal.

Prohibitions on Legislation.—"No bill for the appropriation of money, except for the expenses of the government, shall be introduced after the fortieth day of the session, except by unanimous consent of the house in which it is sought to be introduced." Since the money bills introduced always much exceed the revenues of the State, this is a wise provision, and does much to secure a careful consideration of such measures. The closing days of a session are very busy days indeed, too busy for the consideration of important new bills.

No *local* or *special* laws shall be passed granting a person a divorce, giving any special or exclusive franchise, ex-

empting property from taxation, or incorporating cities. There are thirty-five cases named in the constitution where special laws cannot be passed. These subjects must be governed by general laws. And in all other cases where a general law can be made applicable, no special law shall be enacted. Yet Mr. Bryce tells us that "Even these multifarious restrictions (in the State constitution) on the State legislatures have not been found sufficient. Bitted and bridled as they are by the constitution, they contrive to do plenty of mischief in the direction of private or special legislation." ¹

Organization of the Two Houses.—The house of representatives elects its own speaker. The senate has for its presiding officer the lieutenant governor. In both houses the presiding officer appoints all standing committees. In the senate there are usually about forty of these committees, the size of the committee varying from three to seventeen members, according to the needs of the senate. Among the most important senate committees are these: Appropriations, Judiciary, and Education. In the house there are usually about fifty committees, the size of the committee varying as in the senate. Among the most important house committees are these: Ways and Means, Appropriations, Judiciary, and Education.

There are many committees, because every bill introduced must be referred to an appropriate committee.

Methods of Passing a Bill.—A bill is a carefully prepared draft of a proposed law. Any bill may originate in either house of the legislative assembly, and a bill passed

¹ Bryce, "American Commonwealth," Vol. I, p. 471.

by one house may be amended by the other. It requires a majority of the members-elect to enact a bill into a law. Each bill must have three readings. The process by which a bill becomes a law is long and slow, and full of fatal pitfalls for most bills. They "die in the committee." In the first place, each house adopts its own rules. These rules provide an order of business for the day, which includes, among a dozen other things, (1) the time for reports of standing committees; (2) the time for the introduction of bills; (3) the time for the first and second readings of bills; (4) the time for consideration and debate of bills. Any member may introduce a bill, when the proper time arrives for the introduction of bills. The *usual* steps in the consideration and passage of a bill are then as follows:

(1) First, reading in full. This is for information, and not to precipitate discussion. The bill must then pass to its *second reading*, which may be done the same day. The second reading is by title, a mere formal step.

(2) The presiding officer then refers the bill to the appropriate committee. That is, the bill is said to be "referred."

(3) Action by the committee. The bill may be amended, pigeonholed, or reported with the recommendation that "it do pass," or "it do not pass." If the committee action is favorable the bill passes on to the fourth stage, namely:

(4) Action by the house. The bill goes on the calendar, or list, of bills, and awaits its turn in the order of business. The bill is then debated, and goes to its *third reading*. It is passed by a majority vote of the members-elect.

(5) All bills passed by one house are sent to the other

and there go through the same process. In case of amendments, the bill must be returned where it originated and the amendments agreed to by both houses before the bill is finally passed. The presiding officer of each house then signs the bill and it is sent to the governor for his approval.

(6) Action by the governor. The bill is

(a) Signed, and becomes a law; or is

(b) Not signed, but sent back with the governor's *veto* within three days, and passes both houses again, with a two-thirds majority, and becomes a law; or is

(c) Not signed, and is not returned to the legislature within *three days*, and becomes a law (if the legislature has adjourned, the governor has fifteen days in which he may either sign or veto all bills left with him).

Rules.—The rules of each house that apply to this process of lawmaking are adopted by the houses themselves and may be changed at any time by a majority of the members. But in any event, the real work of scrutinizing bills and giving to them careful consideration must be done in committee. There is no time for thorough debate on each bill before the house, when the number of bills introduced average ten a day, and the daily sitting of each house begins at two o'clock in the afternoon, as a rule. Hence the importance of committees to sift and shape legislation.

Lobby.—A committee in considering an important bill often finds it of distinct advantage to the State to call in experts and secure their opinions. A person who voluntarily seeks a hearing before a committee, in behalf of a bill in which he is interested, is known as a lobbyist. The

person or corporation engaging the services of a lobbyist is said to maintain a lobby at the statehouse. This practice is common, and is looked upon with public favor, so long as the lobbyist uses no stronger persuasion than argument. Some States have even found it necessary to pass laws regulating the subject of lobbying.

Enacting Clause.—The enacting clause of every law is, "Be it enacted by the legislative assembly of the State of North Dakota."

Emergency Clause.—Acts of the legislative assembly take effect on July 1, after the close of the session. But if an emergency exists, and it is so expressed in the act itself, the act may be put into effect at once, by a two-thirds vote in each house.

Impeachment.—The legislative assembly is a lawmaking body. Yet it has one judicial function—that of impeachment. The house has the sole power of bringing in the charges against an officer; the senate tries all impeachment charges. The governor, lieutenant governor, all State officers, the supreme court judges, and all district court judges, are liable to impeachment. When the governor or lieutenant governor is on trial for impeachment charges, the presiding judge of the supreme court presides. If the impeached person is convicted, he is removed from office and is disqualified to hold any office of trust or profit under the State.

Output of Legislation.—The amount of business on hand with the legislature is very great indeed. The number of bills introduced usually exceeds seven hundred. In the eleventh legislative assembly (1909), for example,

there were 379 house bills and 346 senate bills, a total of 725 bills introduced. Of these 250 passed (102 house bills and 148 senate bills). Of those passed, 238 became laws, the governor vetoing twelve bills.

Private bills are passed to grant relief to certain individuals in case they have just claims against the State, since they cannot sue the State in the courts. Many laws pertain to local government officers,—village treasurers, clerks of civil townships, etc. A great many laws amend existing laws. Laws making fundamental changes in our systems of elections, our judiciary, our manner of lawmaking, our taxing system, and other fundamentals of good government are few, and come slowly. The tendency of the legislature is to go slowly, make few radical changes, patch up and improve the laws we have, rather than to experiment boldly and create new machinery outright.

Growing Complexity of Legislation.—As the State increases in population, as corporations multiply, industries differentiate and enlarge, and as new social problems arise, the work of legislation becomes more scientific, more technical. Economic problems, for instance, such as guaranteeing bank deposits, the income tax, the regulation of railroad rates, the settlement of labor disputes, the conservation of natural resources, and many others equally difficult of final settlement confront the lawmaker. To help the lawmaker do his work scientifically—get at all the facts, profit by the experience of other States, and avoid their mistakes—the State has provided a *legislative reference library* in charge of an expert. Laws of other States, court decisions, statistics, expert reports, and fresh

up-to-date reference materials of all kinds are there kept on file. The legislator is thus enabled to approach his work more intelligently and successfully than would be possible without this help.

QUESTIONS ON THE TEXT

1. Where is the legislative power in North Dakota vested?
2. What is the limit of membership of each house?
3. Give facts as to place, date, length of session.
4. Qualifications of members? How chosen? Pay? Term?
5. What is meant by "hold-over senators"?
6. Quality of membership?
7. State two prohibitions on legislation.
8. Do these always prohibit?
9. Describe the organization of the two houses.
10. Explain the committee system fully; give examples.
11. Give the general method of passing a bill.
12. Trace a bill through the process of legislation (six stages).
13. Explain the lobby; criticize it.
14. Explain enacting clause; emergency clause.
15. Describe the output of legislation.
16. What is the legislative reference library? Explain its work and the need of its work.
17. Name one point of difference between the committee system of the State senate and that of the Federal Senate.

QUESTIONS SUGGESTED BY THE TEXT

1. Draw a map of your senatorial district. Give its number. Names of members of legislative assembly, last session, from this district.
2. Draw a map and locate on it the home of each member of the senate committee on appropriations, last session. (See last Blue Book.)
3. Describe the legislative reference library work of Wisconsin.
4. Arrange a table, similar to that in Appendix F, for the last legislative assembly.
Govt. No. Dak.—15

REFERENCES

1. "North Dakota Blue Book."
2. "North Dakota Magazine," issued by commissioner of agriculture and labor.
3. "Rules and Committees, Officers and Members, Legislative Assembly, State of North Dakota." (Pamphlet, biennial, issued by legislative assembly.)
4. "North Dakota Code," 1905.
5. For general discussions, see the following:
Bryce, "American Commonwealth," Vol. I, pp. 647-652 (Lobby); also Ch. 42.
Hart, "Actual Government," Ch. 7.

CHAPTER XIX

THE JUDICIARY

"Sec. 85. The judicial power of the State of North Dakota shall be vested in a supreme court, district courts, county courts, justices of the peace, and in such other courts as may be created by law for cities, incorporated towns and villages." North Dakota Constitution.

In every State there are at least three grades of courts. In our State they are classified as follows: (1) Supreme Court; (2) District Courts; (3) Local Courts.

1. Supreme Court.—The supreme court is made up of five judges who, according to the constitutional qualification, must be men "learned in the law." A judge must be at least thirty years of age, a citizen of the United States, and must have resided in the State three years next preceding his election. The term of a judge is six years; the salary is \$5,000 a year. The manner of choosing judges in this court and in the district courts was established by the "Nonpartisan Judiciary Act" of 1909.¹ According to this interesting law the judges who are candidates for nomination to office must circulate petitions bearing no reference to a party ballot or to the party affiliation of the candidate for such nomination. At the primary election (for the nomination of all congressional, State, and local officers) each voter is given a small separate ballot, called the "judiciary ballot," bearing no party designation, but

¹ Laws of 1909, Ch. 82.

containing the names of all judges who are candidates for nomination. In this nonpartisan way judges receive their nomination to office directly at the hands of the people. At the general election in the fall, the names of the judges who have been nominated at the primary election are again placed on a separate "judiciary ballot" without party designation. And in this nonpartisan way judges receive their election to office.

Two other court officers complete the organization of the supreme court, the clerk and the court reporter. These officers are both appointed by the court, and hold their office during the pleasure of the judges of the court. The duties of these officers are important. The clerk files the documents and records of cases tried in the court, procures the necessary seal, stationery, etc., for the court, and furnishes a syllabus of cases tried to such daily newspapers of the State as care to publish the same. The reporter's duties are very different from those of the clerk. He must prepare the court decisions for publication in books of not less than five hundred and fifty pages. These bound reports are then distributed by the secretary of state, some being given free to State officers, and the rest being sold to lawyers and to the public.

The supreme court meets twice a year at Bismarck, beginning in April and October. Special meetings can be held at cities other than Bismarck, but only upon twenty days' previous published notice.

If any vacancies happen in the office of judge of the supreme court, the governor fills the same by appointment, until the first general election thereafter.

Judges may be removed from office by impeachment by the house of representatives and by trial and conviction by the senate.

2. District Courts.—The constitution provides for district courts and divides the State into six judicial districts. The legislature, however, may increase the number of such districts, but not oftener than once in four years. The number has been increased from time to time; in 1907 it was raised to ten. A person to be eligible to the office of district judge must be "learned in the law," be at least twenty-five years old, a citizen of the United States, a resident of the State for two years, and a resident of the district for which he is elected. He is elected to office in the same manner as a judge of the supreme court, described above. The term of office is four years; the salary is \$3,500.

Comparison with Federal Judiciary.—The student will recall, at this point, that in the case of the Federal judiciary, all judges are appointed (not elected); their term is for life (not four or six years); and their salary, while low, is much above that of the State judges. Bryce's criticism on this subject is worth while. He says:

"Any one of the three phenomena I have described—popular elections, short terms, and small salaries—would be sufficient to lower the tone of the judiciary. Popular elections throw the choice into the hands of the political parties, that is to say, of wire pullers inclined to use every office as a means of rewarding political services, and garrisoning with grateful partisans posts which may conceivably become of political importance. Short terms

oblige the judge to remember and keep on good terms with those who have made him what he is, and in whose hands his fortunes lie. They induce timidity, they discourage independence. And small salaries prevent able men from offering themselves for places whose income is perhaps only one tenth of what a leading barrister can make by private practice.”¹

In this State, however, the nonpartisan judiciary ballot will do much, it is hoped, to make the judges independent of politics. And while it is unfortunately true that the salaries of judges are far below the remuneration received by leading lawyers, yet the office is held in such high esteem that it attracts the highest talent.

Local Courts.—The local courts are of three kinds, county courts, justice courts, and municipal courts. County judges and justices of the peace are elected by the voters for a term of two years. The salary of the county judge varies from \$300 to \$1,800, depending on the assessed valuation of the county. The justice of the peace receives fees for his work, instead of a salary. There is one county judge for each county. The number of justices of the peace is as follows: two for each civil township; four for each county; one for each village; and one for each city.

In each municipality there is elected by the voters a police magistrate, who is *ex officio* justice of the peace.

The jurisdiction and work of these various courts—supreme, district, and local—will be considered in the following chapter.

¹ Bryce, “American Commonwealth,” Vol. I, p. 485.

QUESTIONS ON THE TEXT

1. Construct a table showing (1) names of courts, (2) qualifications of judges in each court, (3) term, (4) how chosen, (5) salary.
2. Describe fully the organization of the supreme court.
3. Explain the Nonpartisan Judiciary Act of 1909.
4. What is the duty of the court reporter? Clerk?
5. How are vacancies in the supreme court filled?
6. How are judicial districts (for the district court) created?
7. Describe fully the organization of a district court.
8. Compare State supreme and district courts with Federal courts.
9. State Bryce's criticism. Does this criticism apply to our State?
10. Describe three kinds of local courts. How are local judges paid?

QUESTIONS SUGGESTED BY THE TEXT

1. In which judicial district do you live? Draw a map of it.
Who is the judge?
2. Name the supreme court judges.
3. Who is your present county judge?

REFERENCES

1. "North Dakota Code," 1905.
2. "Session Laws of North Dakota," 1907, 1909.
3. For a general discussion, see either of the following:
Hart, "Actual Government," Ch. 9.
Bryce, "American Commonwealth," Vol. I, Ch. 42.

CHAPTER XX

ADMINISTRATION OF JUSTICE

"We often hear disparaging remarks concerning the law, but a knowledge of it impresses one with its greatness, importance, fairness, and wisdom. The Anglo-Saxon civil and criminal procedure is the result of centuries of development and years of warfare and struggle. It is the bulwark of our liberties, and is deserving of our highest respect, even though justice at times may seem to miscarry or result in the acquittal of some person whom the community believes to be guilty." McVEY, "Government of Minnesota," p. 126.

The constitution of the State has created the judicial system of the State, leaving to the legislature the work of creating additional courts for cities, when necessary, and the work also of establishing an orderly method of procedure. While the details of organization and the methods of procedure may look complex to the ordinary student, yet there are but a few simple principles of law involved. The *property* of each individual must be respected. This truth was stated by Lincoln in these clear words: "Let not him who is houseless pull down the house of another, but let him work diligently and build one for himself, thus by example assuring that his own shall be safe from violence when built."¹ The *life* of each person must be protected. And, finally, the *peace* and *dignity* of the State must be preserved. The executive branch of government cannot

¹ Nicolay and Hay, "Complete Works of Abraham Lincoln" (Gettysburg Edition), Vol. X, p. 54.

arbitrarily enforce the laws which have been enacted to protect the life and property of persons, the peace and dignity of the State. The courts must be used for the determination of what is just and for the administration of justice.

The two kinds of cases that come before the courts are known as (1) civil actions, and (2) criminal actions.

Civil actions are those involving the keeping of contracts, the payment of wages, and other private matters.

Criminal actions are those brought against a person for committing some crime. A crime is defined by statute as a public offense or an act committed or omitted in violation of law and for which the punishment is death, imprisonment or fine, or other penal discipline. The two classes of crimes are *felonies* (punished with death or imprisonment in the penitentiary) and *misdemeanors* (all other crimes).

The organization of the courts we have seen in the preceding chapter. Let us now turn to an examination of the courts at work. We shall examine the three grades of courts in order, from lowest to highest.

1. Local Courts.—There are various grades of local courts to settle petty cases and to give preliminary hearings to more important cases. Such important cases as are of a criminal nature are then “bound over,” as a usual thing, for the district court. That is, the accused person is placed under a “bond,” signed by responsible parties, guaranteeing his appearance at the stated time before the higher court. If he forfeits his bond or “bail” as it is also called, by running away, or otherwise refusing to appear, the money named in the bond—usually a large amount—

must be paid over. If the person accused of a crime cannot give financial security or "bail," he must go to jail and wait till the regular time for his trial.

The legislature may create local courts for cities, incorporated towns and villages, in addition to those provided in the constitution. Up to the present time, however, there are but three grades of local courts, as follows:

A. Justice of the Peace Courts.—A justice's court is deemed to be always open, and every judicial act of a justice is deemed to be the act of the court. The jurisdiction of the justice extends to petty civil and criminal actions. In civil actions justices have jurisdiction when the amount in controversy does not exceed two hundred dollars. They have no power to deal with cases involving the boundaries or titles to real estate. This is a matter for the district court. In criminal actions the jurisdiction of justices is county-wide, and extends to all offenses punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not over thirty days, or by both such fine and imprisonment.

Justices of the peace also have authority to perform marriage ceremonies.

B. Police Court.—The police magistrate of a city is ex officio justice of the peace. He has exclusive jurisdiction of all offenses against the ordinances of the city. In all other petty civil and criminal actions he has concurrent jurisdiction with the justices of peace of the county.

There is also in each city a city justice of the peace, with the same powers and jurisdiction as a justice of the peace in the county.

C. County Court.—The county court is sometimes spoken of as a probate court. The jurisdiction of this court extends to (1) the probating of wills; (2) settlement of the estates of deceased; (3) appointment of guardians. This court also has the power to grant marriage licenses and to perform marriage ceremonies. Where a deceased person has left a will, it is the duty of the county judge to see that all debts of the deceased are paid, and to divide the remaining property among those designated in the will. If the will is not contested in court, this is a simple and formal process. If there is no will, the county judge appoints an administrator to pay outstanding claims against the property. The balance, if any, is divided according to the law of the descent of property. In case a deceased person leaves an estate worth \$25,000 or over, and there are no direct heirs, the county judge must see that the State inheritance tax of two per cent. is paid to the State treasurer.

County Courts of Increased Jurisdiction are found in some counties. Where a county has a population of over two thousand, the electors by a majority vote may have the jurisdiction of their county court increased to include many cases otherwise going to the district courts. In this case the requirements of the office of county judge are raised and likewise the salary of the office.

2. The District Courts.—A general jurisdiction is conferred on the district courts by the constitution. They have power to hear and determine all civil actions and proceedings and all cases of crimes and misdemeanors of every kind. They have both appellate and original jurisdiction;

appellate, in some petty cases appealed from the lower courts; original, in cases begun in the district court. The general statement may be made here that all the ordinary cases of importance—such as trial of horse thieves, burglars, and the like, divorce actions, murder cases, “blind pig” cases and other cases involving the prohibitory law—are tried in the district courts. It is in this court that we first meet the jury—that body of “twelve good men and true,” dear to the Anglo-Saxon heart. These courts are not entirely confined to the decision of cases; they also issue writs of many kinds, the four following being very common examples:

A. Habeas Corpus.—A writ of *habeas corpus* is an order issued by the court (i. e., the judge) directing whoever may have a person in custody to produce such person before the court and state the reasons for his arrest and detention. If there is no law for such arrest and detention, the person must be set free. From the time of Magna Charta it has been a principle of law that a prisoner has the right to demand this writ from the court.

B. Mandamus.—A writ of *mandamus* is an order to compel a public officer to do his duty, which he has refused to do.

C. Injunction.—A writ of *injunction* is an order of the court commanding a person to do or not to do a certain thing,—for instance, not to move a certain building till the title to it is settled. In labor disputes the injunction is sometimes used to prevent a striker from interfering with the men at work or from trespassing on the property of a corporation. The injunction may be temporary or perma-

ment. Before it is made permanent the judge gives both sides a chance to appear before him and show cause why it should and why it should not be made permanent. If the injunction is violated, the offense constitutes contempt of court, and the judge may hear the evidence, convict, and punish accordingly. This is a very important and a very necessary power in the hands of a judge, and abuse of it by the judge has been infrequent. Critics of this writ, however, call it "government by injunction," since the issuing judge is lawmaker, judge, and jury combined.

D. Quo Warranto (literally, "by what warrant").—This writ is an order of the court compelling a corporation to show whether it is acting within its rights or authority.

3. The Supreme Court.—The jurisdiction of the supreme court is almost entirely appellate. There is no jury in this court. Questions of *fact* must be settled in the courts below, and be agreed on by the parties before the supreme court. This leaves to the supreme court the duty of deciding questions of law only,—for instance, is a certain bond issue of a city legal? Or does the law give a county board of equalization power to assess a bank? Or has the trial of a certain person accused of murder been conducted at every step in the court below according to the law?

In addition to its appellate jurisdiction, the supreme court has original power to issue various *writs* in cases of strictly public concern, affecting the sovereign rights of the State. It also superintends inferior courts, and in this work may issue such original and remedial writs as may be proper.

The decision of the supreme court of the State is final,

and the case can go no higher, unless it can be shown that some Federal question is involved. But if the student will read again the Fourteenth Amendment (first section) to the Federal Constitution, he will see how easy it is to find a "Federal principle" involved in most State cases.

The Jury System.—In this State, as elsewhere, there are two kinds of juries, Grand and Petty (names from the French language, *grand* meaning "large," and *petit* meaning "small").

1. Grand Jury.—The statute defines and explains the grand jury as follows: "A grand jury is a body of men, consisting of not less than sixteen nor more than twenty-three persons of the county, possessing the qualifications prescribed by law, and impaneled and sworn to inquire into and true presentment make to the district court of all crimes or public offenses against the laws of this State committed or triable within the county or judicial subdivision for which this court is holden."

This jury meets when called by the district judge, and makes a secret investigation. If at least twelve of these men are satisfied, after a careful investigation and examination of witnesses, that the law has been broken, they make a formal accusation known as a presentment or an indictment of the supposed guilty party. He is then brought to public trial before the petty jury, and his guilt or innocence proved.

The district judge must call the grand jury

(1) When he deems it necessary.

(2) When the county commissioners where the court is held so request him in writing.

(3) When a petition in writing is presented to him signed by ten per cent. of the voters of the county.

The grand jury is not in general use in the State. In some counties it is very rarely called into service.

2. The Jury.—The petty jury is usually known as merely the jury, and is in universal use in all the district courts of the State. Names of qualified taxpayers are selected, placed in a box, and shaken up. Names are then drawn out. The list thus drawn constitutes the jury. When a case has been tried before a jury, the twelve men retire to the jury room and come to a discussion. Their verdict must be *unanimous*. The unit rule is peculiar to the courts of England and the United States. However, many States have now modified this rule as to civil cases,—for instance, California requires three fourths; Montana two thirds; South Dakota three fourths.¹

Criticism of Jury System.—While the jury system seems well established in this State and Nation, there are many imperfections in it. Matter is often put before a jury which only an expert could decide. One writer has said that “many juries have been influenced more by sympathy than facts; attorneys know that a widow, especially if she be beautiful, has a case against a corporation practically won if it goes to the jury.”

Perhaps we can do no better in this connection than quote the arguments for and against the jury system, made by Dole in his excellent work “Talks About Law.”²

¹ Phillips, John B., “Modifications of the Jury System.” In “University of Colorado Studies,” Vol. II, No. 4, June, 1905; reprinted from “Green Bag,” Vol. XVI, No. 8, August, 1904.

² Dole, “Talks About Law,” pp. 77, 83.

“It may be safely given as the almost unanimous opinion of Bench and Bar that there is no other system of trials now in use that is subject to as much delay, inconvenience, vexation, expense, and uncertainty as the jury system. Although it has been claimed as one of the chief ornaments of the common law, the common law manifested its want of confidence in it by sending a large class of cases—the most complicated ones, and often those involving the largest amounts—to auditors; by making the admission of the least fragment of incompetent testimony ground for setting a verdict aside; and by giving to its judges power to annul verdicts if, in their opinion, contrary to law, contrary to evidence, founded on mistake, passion, or prejudice, or even if they think the damages awarded exorbitant.”

But the jury, made up as it is of poor men, of the “common people,” has much to be said in its favor. To quote Dole:

“Trial by jury has deserved much of the praise bestowed upon it. It was a great advance upon trial by ordeal and trial by battle which it superseded. It accomplished untold good in times when judges were the servile tools of royal power. It has been called the palladium of our liberty, and not seldom the independence and fearlessness of juries presented an impassable barrier to the attempts of the crown upon the liberties of the subject. Indeed, had it not been for the trial by jury we should not be the free people that we now are; and, as human nature is the same in all ages and everywhere, as history repeats itself in substance if not in form, as enormously rich individuals and

corporations are fast becoming the successors to monarchs in power, it is not at all clear that this cumbersome, expensive, and uncertain method of trial can ever be safely dispensed with, and, *with proper care in the selection of jury-men*, it might perhaps be made a means of doing as much justice and as little injustice, as is consistent with human imperfections."

Judicial Procedure.—Without tracing in great detail the course of an action before the courts, let us now examine the main features in our judicial procedure.

1. A Criminal Action.—The person suspected of committing a crime is arrested, and taken before a magistrate, usually a justice of the peace. If this magistrate does not have jurisdiction to try the case, the prisoner is committed to jail, or admitted to bail, to await the session of the district court. Here the prisoner is asked if he is guilty. He then enters a plea of either "guilty" or "not guilty." If he pleads guilty, the judge sentences him. But if he has pleaded not guilty, he is entitled to a trial by jury. If the accused is poor or friendless and has no lawyer to defend him, the judge appoints a counsel, at the expense of the county. The accused has a right of counsel which is thus respected. Witnesses (if there be any) are compelled to come before the court and testify. At the conclusion of the trial, the judge makes a charge to the jury,—that is, he states clearly to them the laws that apply and how they apply to such cases, but he does not seek to influence their opinion of the facts. They alone are to judge of the facts. For example, the prisoner may be accused of manslaughter: the judge sets forth clearly the law de-

fining manslaughter; the jury decide whether the facts produced prove manslaughter as the law defines it. The jury brings back a verdict of "guilty" or "not guilty." If the jury cannot agree, a new trial must be had before a new jury. If not guilty, the prisoner is set at liberty at once. If guilty, the judge sentences him, within a day or two, to the punishment which the law prescribes. If there are mitigating circumstances, the judge will pronounce the minimum penalty; if there are aggravating circumstances he will usually pronounce the maximum penalty for the crime. When the death sentence is rendered by the judge, he must sign a warrant so stating, and setting the date of execution, which day must be not less than six months off and not more than nine. Executions in North Dakota are by hanging, the punishment being inflicted within the walls of the penitentiary at Bismarck.

The prisoner throughout a trial is presumed to be innocent till proved guilty. If the verdict is "guilty" he may appeal the case to the supreme court. The innocent man has every chance to prove his innocence. So many safeguards, indeed, have been thrown around him, that even the guilty man may sometimes escape justice by taking advantage of them.

2. A Civil Action.—A civil action is much different from a criminal action, for the party against whom the suit is brought—the defendant—cannot be punished with death, imprisonment, or fine. The action against him is brought by a "plaintiff," whose grievance is usually a financial one, such as the breaking of a contract, claims to property, or the like. Differences of this kind are brought into court,

not by the arrest of a party, but by serving notice on him called a "summons." If the defendant does not answer within twenty days, the court awards the judgment to the plaintiff. If an answer is filed, it creates an issue for the jury to settle. The jury determines the right of each party, and in case money is due, the amount to be paid.

New Trial and Appeal.—The party aggrieved is entitled to have a new trial,—i. e., a reëxamination by the same court,—if there has been any irregularity in the proceedings, any misconduct of the jury, any newly discovered evidence, if the damages awarded have been excessive, due to passion or prejudice, if there has been any error made by the judge in his rulings, or if the judge himself orders a new trial. Twenty days only are allowed in which to apply for a new trial.

The criticism is sometimes made that a new trial may be obtained too easily, and in this way a rich litigant, such as a big corporation, may wear out a poor man by protracting the litigation unduly. To illustrate: The lawyer is examining a witness. He may ask the question, "Did you receive a letter on such and such a day?" The opposing lawyer may object to the witness answering this question, on the ground that it is not proper evidence. The judge must rule for or against the admission of the evidence. If he rules for its admission, the lawyer of the opposition will announce his "exception" to the ruling. In the course of a long trial the judge must make many such rulings. He may by mistake make a ruling admitting or not admitting evidence, contrary to the law governing judicial procedure. If, therefore, the judge refuses to grant

a new trial, the lawyer may *appél* to the supreme court on the ground of the *error* made by the trial judge. The supreme court will then go over the record of the case thoroughly, and if an error be found—even a technical error—the case will be sent back for a new trial. Or the supreme court may reverse the decision of the district court on account of the trifling *error* made by the trial judge, even though the guilt of the accused is established by uncontradicted evidence.

Declaring Statutes Void.—There is one important power of the supreme court not mentioned before. That is its power to declare statutes void. It may happen that in dealing with the law as applied to a particular case before it, the supreme court will find that the law is contrary to the constitution of the State. The court must then so hold, and the law becomes null and void, exactly as if it had never been passed. A great many laws hastily passed never survive this test before the supreme court. In this way the lawmakers are checked by the constitution as interpreted and applied by the supreme court.

QUESTIONS ON THE TEXT

1. What is the relation of the State constitution to the courts of the State? To the procedure of the courts?
2. What does Lincoln say about the right of property?
3. State three simple principles involved in law.
4. Who enforces the law?
5. What are the functions of the local courts?
6. Explain "preliminary hearing"; "bail."
7. Distinguish between criminal and civil actions.
8. Define two classes of crime.
9. Define the jurisdiction of the justice's court, civil and criminal.

10. Jurisdiction of police court.
11. Jurisdiction of county court.
12. Where may county courts of increased jurisdiction be formed?
13. Explain the jurisdiction of the district court. Give examples.
14. Define original and appellate jurisdiction.
15. Define the following writs: habeas corpus, mandamus, injunction, quo warranto. Explain and criticize injunction.
16. What is the jurisdiction of the supreme court? Other functions?
17. Under what conditions may cases be appealed from State to Federal courts?
18. Discuss the grand jury—size, objects, methods, how and when called.
19. Describe the petty jury: when used, how selected, verdict, arguments for and against the jury system.
20. Describe fully the judicial procedure in criminal actions; in civil actions.
21. Explain the principles governing new trials; appeals.
22. In what way may the supreme court check the State legislature?

QUESTIONS SUGGESTED BY THE TEXT

1. What was the amount of money collected last year from the State inheritance tax?
2. Compare the North Dakota inheritance tax law with the Minnesota law; the Wisconsin law.
3. Give an account of an actual case in court appealed to a higher court. Grounds of the appeal. Final decision.
4. Secure a copy of a brief used before the supreme court and note its argument as to the *law* of the case. Why is there no jury in the supreme court?
5. Should litigation be made more expensive or less expensive?
6. Should it be made easier or harder to appeal cases to the supreme court?

REFERENCES

1. "North Dakota Code" (1905) and subsequent session laws.
2. "North Dakota Reports" (of State supreme court).

3. "North Dakota Blue Book."
4. Hart, "Actual Government," Ch. 9.

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2. "A Judicial Experience," by Theodore Roosevelt, Outlook, March 13, 1909.
3. "The Denial of Justice," by Samuel Scoville, Jr., Outlook, June 12, 1909.
4. "Treadmill Justice," by George W. Alger, Atlantic Monthly, November, 1909.
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CHAPTER XXI

LOCAL GOVERNMENT: COUNTY, TOWNSHIP, VILLAGE

We may look at local government from two view points: (1) What work is it doing for us? This is a study of its *functions*. (2) What form of organization is doing this work for us? What is the machinery used? This is a study of the *organs* of local government. In the human body, for instance, we find a certain organ, such as the liver, performing a certain function, such as the secretion of bile. So also in our government, State and local, we find certain organs performing certain functions.

The chief functions of local government concern six subjects, namely, (1) Education; (2) Public Health; (3) Finance and Taxation; (4) Good Roads; (5) Police and Justice; (6) Charity. The forms or organs of local government are five—the county, township, village, city, and school district. The discussion of the city and the school district we must defer to later chapters. Let us consider the forms of local government before examining the actual work of these various forms.

I. FORMS OF LOCAL GOVERNMENT

The constitution itself provides for the various forms of local government found in our State. However, it leaves to the State legislature the duty of providing “by

general law" for the organization and incorporation of these units. The local units are all incorporated—that is, they are corporations. Each is a "body politic and corporate," which means, it has both political and business functions. Its political functions are to hold elections, levy taxes, and carry on government in general. As an ordinary business corporation it may sue and be sued, hold property, and make contracts.



Courthouse, Billings County

1. **The County.**—In the older States of the East, counties are well established as permanent districts, and no changes are made in their boundaries. In North Dakota, however, the creation of new counties is of frequent occurrence. A new county can be organized in this State only by vote of the people in the district concerned. If the district is already a part of a large county, and a division is desired, the voters in the proposed new county must petition the county commissioners, and the matter is then submitted to a vote of the whole county. Thus Montrail county was formed, out of part of Ward county,

in 1908. If, however, the proposed county be unorganized territory,—a condition which has now ceased to exist in North Dakota,—the voters would have to petition the governor, and he would order an election to elect county officers to complete the organization.

The location of the county seat is a matter of great interest to the inhabitants of a county. This, too, is left entirely to the voters of the county. The county seat can be moved



Courthouse, Pembina County

to a new town any time the voters desire, that is, provided that two thirds of the electors so vote at the general election, and provided also that the question cannot come up for a vote oftener than once in ten years.

The minimum size and population of a county are set by the constitution, as twenty-four congressional townships and 1,000 population.

County Commissioners.—In the county government we look in vain for the clear-cut division into the legislative,

the executive, and the judicial branches. County government is mostly *administrative* work, administering, that is, the laws made at Bismarek. The county, therefore, needs no legislative branch. However, such local lawmaking as the county actually does need is done by the board of county commissioners. This board consists of three or five men—usually five—elected by districts into which the county is divided, for a term of four years. This board



Courthouse, McHenry County

meets at the courthouse at regular intervals, usually the first two or three days of every month, and the chief business before this body is, in brief, to pay the bills of the county, and raise the money for this purpose (see page 276). In one sense of the word this board is a sovereign body; it has the power of taxing the people. But it must keep within the limits set by law. It has some important appointive powers. This board has also general oversight of the county buildings. In short, all the business which the

county transacts, as a body corporate, is done through this "committee," as it might well be called. It sits each year in July as a county board of equalization. The proceedings of each meeting are carefully recorded by the clerk of the board, who is always the county auditor. He publishes these proceedings in three newspapers of the county, so that the voters may know how the county business is being transacted. The county auditor, who is book-keeper for the whole county, is a valuable servant of the board, by reason of his familiarity with the finances of the county.

County Officers.—The regular county officers, besides the commissioners, are the auditor, treasurer, sheriff, clerk of court, register of deeds, State's attorney, judge, superintendent of schools, public administrator, coroner, and surveyor. There may be elected also four justices of the peace and four constables. And, where the civil townships have not yet been organized, a county assessor is chosen.

All the county officers named above are elected. The term of office is two years, except that the public administrator is elected for four years. Most officers are reelected, so the average term of service is about six years. The sheriff and treasurer, however, may serve only two terms. Salaries depend on the assessed valuation of the property of the county. In some offices where the duties are either light, or uncertain as to time and amount of work, the pay is by fees. The office of sheriff, for instance, depends upon fees; and for this reason it is a much sought-after position. In a very large county, the fees for this office may amount to \$25,000 a year.

Two questions have been frequently asked by critics of county government. Have we not too many elective offices? Would it be possible to abolish the fee system and substitute some better form of compensation?

Duties of County Auditor.—In some States the county auditor is called the county clerk. As the county book-keeper, his work is both intricate and important. In his office is kept the name of every taxpayer in the county, the description of his real and personal property carefully itemized, with its assessed valuation as turned in by the local assessors; also books showing the names of those in arrears in paying taxes,—“delinquent tax list” as it is called. He furnishes the county treasurer the tax list on which the treasurer makes all collections. He furnishes the local assessors their supplies, including a copy of the last year’s assessment. He is also a check on the county treasurer, for no money is paid out by the treasurer except on the order or “warrant” of the auditor. All local officers who are required to give bonds, must file a copy of the bond with the auditor. The auditor must print and send out election supplies. And, as we have just seen, he is the clerk of the board of county commissioners. He has one important power of assessment: if the local assessor omits property from the assessment lists, the auditor may add it himself.

Duties of County Treasurer.—The county treasurer is the collector and the custodian of the county funds. He is the tax collector also for every school district, township, village, and city in the county, and of all the State taxes paid in the county. The local taxes of the various di-

visions of the county are paid over by him to the various divisions. The county money he deposits—or may deposit—in banks of the county, and from two to five per cent. interest is paid to the county on such deposits.

Duties of County Sheriff.—The duties of the sheriff fall under two classes: (1) He is the conservator of the peace. In this sense, he is the county's chief executive, and may summon citizens to aid him in preserving order. In this capacity sheriffs have sometimes made reputations for themselves as heroes, in defending their prisoners from mob violence, or in other ways upholding law and order. (2) The sheriff is also the servant or minister of the courts. Indeed, most of the sheriff's work is to act as the executive agent of the courts. For instance, the various writs and orders are placed in his hands to be executed: summons to defendants, subpoenas to witnesses, writs of attachment, warrants of arrest, and so on. For this work he receives his fees.¹ If damages are awarded in a civil suit, he must collect the amount of the judgment, even though this can be done only by the seizure and sale of property. This is a great responsibility. Criminals sentenced to the State penitentiary must be taken there by the sheriff. He also keeps the county jail, and feeds and governs the prisoners in it.

Duties of Clerk of Court.—The district court has in each county an officer entitled clerk of the court. He is a regular county officer, yet his duties are almost wholly connected with the district court. His official duties are,

¹ "North Dakota Code," 1905, Sec. 2600. See also Secs. 1564, 1703, 1769, 2601-2604.

(1) to keep official books, papers, and records pertaining to his office; (2) to attend each session of the district court and act as clerk thereof; (3) to keep a complete record of all applications for naturalization papers and a record of all "Naturalization, Final Papers," issued by the district judge.

Duties of Register of Deeds.—Who owns the land? This is a question not only of private concern, but of public interest in every community. To prevent disputes and misunderstandings over land titles, the county has provided a set of books containing a complete record of every acre of farm land and every town lot in the county, from the time the land belonged to the Federal government down to the present moment. The register of deeds must make a full, verbatim record of every deed in the county, and put his stamp upon the deed when he records it. Likewise he must record every mortgage on land, every land contract or other paper pertaining to land sales, and also chattel mortgages (mortgages on personal property). A small fee is charged for recording each instrument.

Duties of State's Attorney.—Whether the enforcement of State laws in a county shall be "loose" or "strict" depends upon the State's attorney. So important is this office that the law provides that the attorney-general or his assistants are authorized to institute and prosecute cases whenever the State's attorney of any county refuses or neglects to do his duty. His duties are, (1) to prosecute violators of the law; (2) to institute the proper proceedings against persons "charged with or reasonably suspected of public offenses," that they may be arrested and brought

to trial; (3) to give his written opinion, free of charge, when requested to do so, to all county, township, and school district officers.

Duties of County Judge.—The duties of the county judge are fully given in the preceding chapter, pages 235, 237. The judge is the “county court.”

Duties of Superintendent of Schools.—The county superintendent is the connecting link between the school teacher and the State superintendent of public instruction. The efficiency and success of the common schools depends in part on each link in this chain. The general duties of the county superintendent are to carry into effect all instructions of the State superintendent, and to visit each public school under his supervision. His specific duties are to hold examination of teachers four times a year, revoke certificates for cause, arrange for a teachers’ institute for his county, and keep full statistical and financial records of school matters within his county.

Duties of Public Administrator.—Before the estates of deceased persons can be finally settled up to the county court, all outstanding debts must be paid, and outstanding bills collected. It is the duty of an administrator to make such payments and collections. Where the heirs to an estate are known, and are of age, they usually apply to the county judge for the appointment of an administrator of their own choosing. When an estate is left, and no such application is made, or the appointed administrator refuses to serve, then it becomes the duty of the public administrator to see that the estate is settled according to the law governing such matters. Were it not for this

officer, there would be no one whose specific duty it is to look after the property and estate of persons found dead, or of strangers dying in the county, or of orphans under fourteen years of age who have no legal guardian.

Duties of Coroner.—"Next to the sheriff the coroner is the oldest of our county officers, and it is the oldest elective county office. . . . Coroners' inquests have been a subject of derision since the time of Shakespeare, and in this country efforts have been made for nearly fifty years to reform the antiquated procedure."¹ It is the duty of the coroner to hold an inquest when a death has apparently been due to violence or other unlawful means. He must report in writing the cause of the death, if he can learn it. "To perform the duties properly a coroner should be both a criminal lawyer and a specialized medical expert. But those selected can usually lay claim to neither qualification."²

Duties of County Surveyor.—The duties of the county surveyor are to lay out public roads when so directed, make accurate surveys of land boundaries in the county when requested by the owner, and make and file with the county auditor maps and plats of the completed surveys.

Minor County Officers.—There are four *justices of the peace* and four *constables* for the county, but their duties correspond closely to the duties of the township officers of the same name, described elsewhere (pages 236, 269). In some newer counties are found *county assessors*. Their duties are the same as the duties of the township assessors, described under a later paragraph (page 264).

¹ Fairlie, "Local Government," pp. 112, 115.

² *Ibid.*, p. 115.

2. The Township.—The civil township or town of North Dakota is the one division of our State where we find government in the form of a pure democracy. Here, on the third Tuesday in March of each year, the voters meet in the annual town meeting. It is much similar to the famous New England town meeting. It is direct government. It has three principal powers and duties: (1) Election of officers for ensuing year; (2) making of rules and regulations for business of town; (3) levying the town tax.

The following are the principal offices to be filled: (1) Supervisors (three men); (2) Clerk; (3) Treasurer; (4) Assessor; (5) Justices of the Peace (two men); (6) Constables (two men); (7) Overseers of Highways (one man for each road district). A minor officer known as *Pound Master*, is sometimes elected. The term of office for all township officers is one year—except the justices and constables, who serve two years, and the supervisors, who serve three years, one retiring each year. The salaries of the offices are small, depending on the number of days of work actually done. For instance, the assessor gets \$3 a day, but cannot receive pay for more than twenty days a year. Hence his year's salary is \$60.

The duties of the various township officers are indicated by their names.

The work of local government which is carried on by the township is described below under the discussion of the functions of local government. It is sufficient to note here that the chief work of the town government pertains to good roads, police and justice, and taxation.

Each civil township, like the county, is a body politic and corporate. Each must have a central meeting place, usually its own townhall, or a schoolhouse.

3. The Village.—If a village grows up about the townhall, or elsewhere, its inhabitants may decide to incorporate and set up a village government of their own, independent of the township. To incorporate as a village, the inhabitants of the little community must meet certain conditions: (1) They must petition the county commissioners, exactly as they would do were they seeking to form a civil township; (2) they must, with the consent of the county commissioners, then hold a special election, and a majority vote decides the question. The main reason against incorporation is the matter of expense. It will make taxes higher. The main reasons for it are: (1) The people need some protection against fire, such as the services of a night watchman, and some simple fire apparatus; (2) they need better police protection against robbers, burglars, etc., especially if there is a store or bank in the village; (3) they need better roads, bridges, and sidewalks. These are the most urgent needs, and the meeting of these needs, of course, causes the small increase in taxation mentioned above.

The village officers are elected each year in May, the term of office being one year. The six village offices are: (1) Trustees (one for each district of the village); (2) Clerk; (3) Assessor; (4) Treasurer; (5) Marshal; (6) Justice of the Peace.

The Village Trustees.—The village trustees, like the county commissioners, have the power of taxing the people. They have the general powers of local government in the

village, such as providing fire and police protection, health protection, etc.

II. FUNCTIONS OF LOCAL GOVERNMENT

1. Education.—The maintenance of schools is one of the most important functions of local government. This subject is of such great and vital importance that it is discussed separately in Chapter XXV.

2. Public Health.—The most valuable thing in any community is the good health of its people. What is being done now to protect and safeguard the health of the people? How is it being done? These are two important questions. As was stated in Chapter I of this book, the family must always hold first place in taking care of the health of the citizens. For prevention of disease and for cure of disease the family is first responsible. But the State must coöperate with the family.

In former times, when an epidemic such as smallpox, diphtheria, typhoid fever, or scarlet fever got a start in a community, the disease ran its course, carrying hundreds of helpless people to an untimely death. But this is not the case any more, now that the State and local governments have established boards of health. Three important things are being done by these boards of health. We may describe their work as follows:

A. Control of Communicable Disease.—If a disease is contagious or infectious, the first thing is to prevent its spreading to other persons. This is done (1) by vaccination, in case of smallpox; (2) by quarantine in case of diseases such as smallpox, diphtheria, and scarlet fever;

(3) by removal of patients to hospitals. It often becomes necessary, where a quarantine could not well be enforced, to remove the sick person to a detention hospital. Every county should have such a building. The cost of this hospital care is borne by the sick person, unless he is too poor to pay it. In that case the county pays it.

B. Prevention of Disease.—Boards of health do all in their power to prevent sickness by causing the removal of filth, nuisances, dead animals, or other causes of contamination. They prevent the placing of dead animals in streams and the pollution of the water supply which would result therefrom.

C. Vital Statistics.—Full statistics of births, deaths, and causes of deaths are kept on the public records.

The machinery for carrying out the public health work of the State consists of the local boards of health and the State Public Health Laboratory. (1) The township board of health consists of the three township supervisors. Its work is purely local, but is nevertheless important in case of dangerous epidemics. It has power to quarantine, require vaccination, and establish a hospital. (2) The county has a board of health of three members. One must be a physician, and is known as the superintendent of public health. The county board of health is constituted as follows: The State's attorney acts as its president, and two other members (vice president and superintendent of public health) are appointed by the county commissioners. The compensation of the superintendent is so small (\$5 a day for time actually spent) that a good physician can scarcely afford to devote much time to this work and neglect his

regular practice. This board must collect vital statistics from the townships, villages, and cities, and report to the State board of health. In addition to this clerical work, the county board of health has the same three powers as has the township board described above. (3) The State board of health supervises the work of the county, city, and township boards.

3. Finance and Taxation.—An important function of local government is to raise the money for the proper carrying out of all the other functions of government, both State and local. For in North Dakota even the State must look almost wholly to the machinery of local government for providing it with its vast yearly income.

Who spends this money? How is it raised? Let us answer these two questions.

The "control of the purse," that is, the spending of the public's money, is manifestly an important thing. For "the power to tax is the power to destroy." The spending power, which is to say the taxing power, in local government is vested as follows, subject to the control of the State legislature:

County—county commissioners.

Township—voters of township in town meeting.

Village—trustees.

The township, as we see by this statement, is the one purely democratic unit of local government.

For raising the money our lawmakers have created a set of tax machinery which does not always work well in all its parts, although it looks absolutely perfect on paper. The local tax machinery consists of three parts: (1) The

assessor; (2) the boards of equalization; (3) tax collectors.

The assessor is a township (or village) officer, chosen for one year, at a salary of \$60 (for twenty days' work). His duties are very simple, as written on paper, but very complex in practice. (a) He must find all the property in his township (or village), whether houses and lands, or live stock, or musical instruments, or diamonds, or threshing machines, or mortgages or mules, or money or merchandise; (b) he must assess it at its actual cash value. The list which he makes out, swears to, and turns in to the county auditor must thus contain *all the property, valued at its true value*. It is of course quite impossible to do these two things. This makes the machinery for *equalizing* the assessment necessary. To smooth out the inequalities of assessment the law has created very complete machinery, both State and local. The boards that attempt to equalize and thus by curing all defects, make the taxing system work justice to all, are shown in this brief table:

ASSESSMENT AND EQUALIZATION

1. Property assessed

By local assessor, in April and May.

2. Assessment equalized

- A. Between individuals

By Town Board of Review, which meets in June.

- B. Between townships (or cities)

By County Board of Equalization, which meets in July.

- C. Between Counties

By State Board of Equalization, which meets in August.

Defects.—But very few people come before the town board of review and complain about their assessments. In fact, they do not know whether they are assessed too high or too low, for they do not know how their neighbors are assessed, and hence have no standard of comparison. The county board of equalization changes the assessment of *classes* of property, not individual pieces, and hence they cannot cure the individual defects and injustices left by the local board and the local assessor. The same statement applies to the State board of equalization. Hence, only in a very incomplete way does “equalization” equalize assessment between individuals, and only in a very rough way between townships and counties. How to *prevent*, rather than *cure*, these defects in taxation is one of the unsettled questions in civil government.

Tax Collector.—The county treasurer collects the taxes. If taxes are not paid when due, heavy penalties are added. Finally, if necessary, the sheriff may sell the property for the taxes.

Debt.—It is sometimes necessary for local government districts to borrow money. Counties often borrow to construct a courthouse or jail, or even to build a large bridge. Townships do not spend much money, and hence do not often borrow. The same is true of villages. To prevent these political divisions from borrowing too much and thus becoming bankrupt, there are two very strict limitations placed on them: (1) Constitutional limitations on the *amount* and *purpose* of the debt. The debt cannot exceed, in amount, five per cent. of the assessed value of the taxable property of the district. It must be for a public purpose,

but especially, it cannot be for the purpose of giving aid or a subsidy to any railroad or other corporations, or associations, or individuals. (2) *On the method of deciding to borrow.* A county may borrow money and issue bonds for the erection of county buildings, only when a majority of the voters of the county vote in favor of the proposition. The only other purpose for which a county can borrow is to pay outstanding indebtedness, but in this case, however, the county commissioners have power to issue the bonds. A township has but one way to decide to borrow: two thirds of the voters present at the town meeting must vote in favor of the proposition. The village has yet another method: namely, a petition must be presented to the trustees, signed by the owners of five eighths of the taxable property of the village, favoring the debt. In other words, it is property, not persons, that counts in the village. In the county and township it is persons, whether they own property and pay taxes or not, that decide the debt question.

4. Good Roads.—The value of good roads to a community is very great indeed, especially if it be a farming community. According to estimates made by the Federal government, the average cost of hauling a ton of freight—a small wagon load—one mile on a country road is twenty-three cents; the cost of shipping one ton one mile on a railroad is 7.8 mills, or less than one thirtieth as much. The average railroad will haul the farmer's wheat, for example, 150 miles for the same cost as the farmer can haul it five miles over the average country road. Bad roads increase the cost of hauling, increase the wear and tear on wagons, horses, and harness. They prevent the farmer

from raising fruits and vegetables which could be quickly and safely marketed in the near-by town if the roads would permit; they prevent him from marketing at the right time to catch the highest markets. Good roads improve the looks of a country, increase the comfort of the people, and raise the price of land. Considering the millions of bushels of grain which are hauled over the country roads of North Dakota each year as the crop is harvested and marketed, we see the tremendous tax that bad roads levy on our people. Over good roads larger loads could be hauled and at less expense. Children could get to school more easily; more rural free delivery routes could be established and maintained. Good roads are very expensive to construct, and mean more taxes, but they are worth more than they cost.

Our Present Road System.—Roadmaking in North Dakota is turned over to the counties and townships. The township road taxes, unlike other taxes, may be paid either in *money* or in *labor*. The county road tax, generally called the "Road and Bridge fund," is a tax of at least one mill on the property in the county. It is collected in cash and spent by the county commissioners on road improvements, principally bridges. Since every bridge costing over \$100 is a county bridge, the county tax goes almost wholly for bridges, leaving little or nothing for grading, ditching, and surfacing roads. That throws the small bridges and the real roadmaking back on the townships. The three township supervisors have the supervision and care of the roads of their township, the custody of the road machinery, and the making of plans and specifications for roads. The usual

plan followed is to turn the work over to "highway overseers," one for each road district, who works for \$2 a day. In some cases, however, they have got rid of the local road overseer. The township road tax consists of (a) a road poll tax of \$1.50 on each male from twenty-one to fifty years of age, and (b) a road tax, levied by the supervisors, which may be as high as 10 mills (i. e., one per cent.) on the property in the township. In this way many thousands of dollars *could* be raised for road construction. But little money is raised; often none at all. This tax may be paid in labor or money. The labor is counted at \$1.50 a day of eight hours, or \$3.00 for a man and team. The tax is generally paid in labor, "worked out," as it is popularly known. This system is criticized by a government road expert in these strong words,—“You know, as well as I, that the working out of taxes is the most inadequate, the most inefficient, and the most indefensible form of revenue that could be devised. You know that the men who work the road as a rule know nothing about the work, care nothing about it, shirk responsibilities, are not amenable to discipline, and generally leave the road worse than it was before they touched it. In this criticism I am not blaming the men, but the system; it has grown up as a venerable institution handed down from generation to generation, a custom made mellow with traditions of the old-time frolics when our fathers ‘worked the road.’ ”¹

Changes Needed.—The two changes needed in our road system are: (1) The road tax should be paid in money,

¹ Logan Waller Page, Director Office Public Roads, Department of Agriculture, Washington, D. C. From an address delivered before the legislature of Minnesota, February 25, 1909.

and (2) central supervision should be exercised over all road work. In some places now the road tax is paid in money; in some townships the work is centralized in the hands of the supervisors. A county road engineer would be better, especially if he were working under the supervision of a State engineer or highway commission. This would make the road system administration somewhat similar to the school administration, with its State superintendent and county superintendents.

5. Police and Justice.—One of the important functions of local government is the preservation of law and order. The public peace must not be disturbed. Every political subdivision of our state is provided with the necessary machinery for the arrest, trial, and punishment of every lawbreaker. In the cities we find uniformed policemen to make the arrest. In the rural districts, such as we are describing in this chapter, police work is performed by other officers. At the county seat of each county there is a sheriff ready to arrest any one in any part of the county upon a proper warrant. Likewise in each township the town meeting elects or may elect two constables with power to arrest disturbers of the peace. And last of all, the village has its marshal, with full power to arrest and to use the necessary force in making an arrest, even though it be the use of firearms. The work of the local courts in trying and convicting these offenders has already been described. The county maintains its courthouse and jail, and may add, if it sees fit, a workhouse for the purpose of putting its prisoners to work at hard labor. A jail without a workhouse may prove a pleasant stopping place in the winter time for

tramps and petty criminals. Accordingly some jails are provided with a workhouse with a woodyard or stone pile for the prisoners. The township may, if it so votes at the annual meeting, erect a calaboose for the confinement of drunk or disorderly persons. The village, too, has power to establish and erect a jail for the confinement of disorderly persons, vagrants, tramps, and idle persons convicted of violating any village ordinance, and "to prevent and suppress riots, affrays, noises, disturbances and disorderly assemblies in any public and private place."

The State has provided a Reform School at Mandan where lawbreakers, under the age of eighteen years, or incorrigible children upon written complaint of their parents or guardians, may be sent by the district judge.

Thus we see that back of our local government, as well as back of our State government, is force which may be used if necessary.

6. Charity.—The State law declares that the "county commissioners are overseers of the poor." "Each county," continues the law, "shall relieve and support all poor and indigent persons residing therein, whenever they shall be in need thereof, and the board of county commissioners may raise money for the support and employment of the poor." Persons must live in the county ninety days to become residents of the county and entitled to receive poor relief. The commissioners are required to keep a list of persons receiving aid, known as a "Poor Book," or in popular language, a "Pauper Roll." Nonresidents, sick or dying in the county, are also entitled to relief at the hands of the county commissioners.

Indoor and Outdoor Relief.—There are two general methods of helping the poor, known as Indoor and Outdoor relief. Indoor relief means that relief which is given only to inmates of the poorhouse or some similar institution. Persons who are paupers and who are “permanent charges” must receive this indoor relief in our State. Outdoor relief is relief given out in the form of food, clothing, fuel, and so on, which the needy person may receive in his own home. The argument for this method of poor relief is that it does not humiliate the person receiving it. The argument against it is that it encourages pauperism. The argument for indoor relief is that it discourages pauperism. The argument against it is that many worthy poor suffer in silence rather than undergo the shame of going to the poorhouse to live with paupers.

North Dakota counties employ both methods of poor relief. Some counties measure their success in charity work by the smallness of the expense incurred, rather than by the amount of pauperism prevented or cured.

The County Poor.—The county poor, as a rule, consist of two classes of persons, (1) the aged and the helpless, who are too old to take care of themselves, and (2) the orphan children who are too young to help themselves. The aged need permanent relief, and hence are usually sent to the county poorhouse. The children need only temporary help. They may be “bound out” for a term of years, with respectable families; or they too, may be sent to the county poorhouse. Here they mingle with a few very old people. A third class of county poor should also be mentioned, namely, helpless women (either widows or deserted wives)

left with small children and without adequate means of support. To these the county often grants temporary outdoor relief.

County Poor Farm.—Any county may have, if the majority of the voters so decide at any special or general election, a county poor farm and poorhouse. The farm is to give productive employment to such of the paupers as are able to do farm work of any kind. The county commissioners, in counties having a poor farm, appoint a keeper of the poor farm who resides at the poorhouse, looks after the welfare of the inmates, and has general control of the farm during his term of office. A *County Physician* is also appointed by the commissioners to attend the county poorhouse when needed.

County Hospital.—The county commissioners may also cause to be erected a county detention hospital, popularly known as a "Pest House," for the confinement of those who are suffering from contagious and infectious diseases, and who cannot be quarantined in their own homes. For this service the patient is charged a regular hospital and nursing fee, which he must pay if he is able.

The County Afflicted.—The insane and the feeble-minded of the county are sent to State institutions for treatment. The Institution for the Feeble-Minded is at Grafton; the Hospital for the Insane is at Jamestown. The county contributes one hundred dollars a year for each of its residents undergoing treatment in these institutions.

The difficult task of determining who is insane is now turned over to three men in each county, known as the *Board of Insanity*. The chairman of the board is the County

Judge. The county commissioners appoint the two other members. One must be a lawyer; one must be a doctor. Their term of office is two years. Their duty is to investigate alleged insanity, and report thereon.

The State has provided a School for the Blind at Bathgate, and for the Deaf and Dumb at Devils Lake. The county is relieved of the care of the blind and the deaf-mute.

QUESTIONS ON THE TEXT

1. Distinguish clearly between *organ* and *function* of local government.
2. Name six functions of local government; five organs.
3. What does the State constitution fix concerning local government?
4. Define and illustrate "body politic and corporate."
5. How are new counties formed?
6. How are county seats located? Relocated?
7. Give the minimum size of a county.
8. Has the county three branches of government? Explain.
9. Locate and describe the "legislative branch" of county government; number of men, term, duties.
10. Who is clerk of the board of county commissioners? What is the advantage of this?
11. Name the county officers. Their legal term of office. Their average term of office. Any exceptions? How chosen? Salaries.
12. State the duties of the county auditor.
13. State the duties of the county treasurer.
14. Name and define two classes of duties of the sheriff. Show his great responsibility.
15. State the duties of the clerk of court.
16. State the duties of the register of deeds. His importance.
17. State the duties of the State's attorney. What depends on him?
18. State the duties of county judge.
19. State the duties of the county superintendent of schools. Show his importance.

20. State the duties of the public administrator. Need of this officer.
21. State the duties of the coroner. Criticize this office.
22. State the duties of the county surveyor.
23. What are the minor officers of the county, and their duty?
24. Why is our township government democratic? Describe it.
25. Name the three functions of town government; the seven offices. What officers are elected annually?
26. To what things chiefly does the work of township government pertain?
27. How may a village be incorporated (two steps)?
28. Give arguments for and against incorporation.
29. When is the village election held? What officers are chosen? Term?
30. Is village government democratic? Why?
31. What three things are our boards of health trying to do for us? How?
32. Describe the local machinery for protecting health.
33. Who has control of the purse in local government? Why is this an important thing?
34. Describe fully the machinery for raising public money.
35. What are its chief defects? Any remedy?
36. What are the two general limitations on the borrowing power?
37. Show the application of these rules to the county, township, and village.
38. Show the need of good roads. Describe fully our present road system. Criticize "working the road."
39. What two changes are needed in our road system? Where can information be obtained concerning the subject of good roads?
40. Show the force that may be used, if necessary, to preserve law and order in the county, township, and village.
41. Who oversee the poor? Define two kinds of poor relief. State the arguments for and against each kind.
42. Describe poor relief in North Dakota. What three classes of persons need poor relief?
43. What is done for the afflicted in each county? In what ways does the State help?

QUESTIONS SUGGESTED BY THE TEXT

1. What is the appointive power of the county board?
2. Is your township (or village) in debt? What for? How much?
3. Is your county in debt? What for? How much?
4. Should only taxpayers be allowed to vote on a question of incurring debt?
5. Does your county have a poor farm? If so, tell the number of the inmates of the poorhouse and classify them as to age and sex.
6. Secure a printed copy of the proceedings of the board of county commissioners, and discuss their powers and duties as shown by this report.
7. Have we too many elective county offices?
8. Should the fee system be abolished?
9. What type of man is needed for sheriff? Why?
10. What is the difference between a civil township and a congressional township?
11. What is your community doing to protect public health? To improve public health?
12. Does "equalization" of assessment equalize? Reasons for your answer?
13. What is done in your community to secure good roads?
14. What States now have a State Highway Commission?
15. Name your county officers.
16. Make out a financial statement for your county similar to that on page 276.

REFERENCES

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"Good Roads in North Dakota," by Wm. H. Clark, Fifth Biennial Report, North Dakota Geological Survey, pp. 255-269.

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COUNTY FINANCES

CASS COUNTY, NORTH DAKOTA, 1908

(Compiled from annual financial statements of county auditor and county treasurer.)

Expenditures, January 1 to December 31

Education		\$38,783.79
Health		154.00
Good Roads		31,524.50
Police and Justice		34,891.75
District Court	\$15,110.28	
Justice Courts	8,112.02	
County Courts	3,738.42	
Jail	2,548.93	
Prisoners	5,382.10	
Charity		24,455.98
County Hospital	16,991.67	
County poor	4,533.86	
County insane	1,090.45	
County physicians	1,840.00	
Salaries of county officers (including clerks and deputies		30,834.77
Five commissioners	2,845.95	
Sheriff	2,130.19	
Register of Deeds	5,499.84	
Auditor	7,062.42	

Treasurer	\$5,407.02	
State's Attorney	3,066.30	
Supt. of Schools	4,407.50	
Surveyor	68.00	
Coroner	347.55	
Courthouse		\$ 1,208.20
Elections		4,641.06
County fair		357.25
Interest and sinking fund . .		14,286.09
Miscellaneous		11,893.64
Books and stationery . .	2,614.88	
Fuel and lights	1,893.00	
Printing and advertising . .	2,610.45	
Janitor and engineer . .	1,354.36	
Telephone and postage . .	980.15	
Sundries	2,485.80	
Total		<u>\$193,076.03</u>

Tax Rate, 1907:

State	5.1
County	5.9
School	2.0

Total Mills 13.0

. Bonded Debt, \$30,000

CHAPTER XXII

THE CITY

"Two tests of practical efficiency may be applied to the government of a city: What does it provide for the people, and what does it cost the people?"

"There is no denying that the government of cities is the one conspicuous failure of the United States." BRYCE, "American Commonwealth," Vol. 1, pp. 606, 608.

City Government.—Cities in North Dakota do not enjoy "home-rule"; that is, they do not choose their own form of government; they do not write their own charters. The form of city government is fixed by the State constitution and State laws. The constitution, in very general terms only, speaks of cities as "municipal corporations," and says that the State legislature shall provide by general law for their organization, restricting their powers as to levying taxes and assessments and borrowing money. We must look therefore to the statutes passed by the State legislature for our city charters. The preliminary requirements for organizing a village as a city with a ready-made charter are these two: (1) the village must have a population of at least five hundred; (2) the voters therein must favor the change by a majority vote.

City Election.—To separate city politics from State and National politics, the annual city election is held in April.

Two Forms of City Government.—The State law pro-

vides two distinct forms of city government. They are (1) the Mayor and Council plan, for cities of any size; (2) the Commission plan, for cities of over 2,000 population. Let us compare these two forms.

I. THE MAYOR AND COUNCIL PLAN

The Mayor and Council plan is patterned after the Federal and State governments. It has a *legislative* branch, the City Council; an *executive* branch, the Mayor and the Departments, and a *judicial* branch, the Police Magistrate and City Justice of the Peace. Under this form of city government, the five elective offices of the city are the following: office of (1) aldermen, (2) mayor, (3) treasurer, (4) police magistrate, and (5) city justice. The appointive officers of a city are the auditor, city attorney, city assessor, health officer, and the chiefs or heads of the various departments such as police, fire, water, health, streets, etc.

Elective officers are elected for two years. Appointive officers are appointed for indefinite terms.

1. Council.—The council is composed of the mayor and two aldermen from each ward. The mayor presides, but has no vote except in case of a tie vote. During his absence the council has one of its own members for a presiding officer. He is known as the president of the council. The powers of the council fall under three classes: (1) Financial powers; (2) Power over Appointments; (3) General Legislative powers.

(1) The council has full control over the city's finances. It levies the taxes. It spends the money. It may also borrow money up to the debt limit of the city. This debt

limit is fixed by the constitution at five per cent., eight per cent., or twelve per cent. of the property valuation of the city, depending on these conditions; the council may borrow and issue bonds up to the five per cent. limit at any time; the council may increase this to eight per cent. if authorized to do so by a two-thirds vote of the electors; and again the council may increase this four per cent. for the purpose of furnishing the city with waterworks and sewers. This last investment, however, brings in to the city a revenue, and hence is different from expenditures for the other work of the city. The council also has power to levy "*special assessments*." This is one species of tax levied against property to pay for adjoining improvements such as street paving, city water and sewer pipes, and the like. The property benefited pays the special assessment, and in this way the enormous cost of city improvements is generally borne.

(2) The council has power to confirm or reject the appointments of the mayor. No appointment is valid till confirmed by the council.

(3) The council is the legislative body of the city. Like Congress or the State legislature, it is divided into numerous committees. Its regular meetings occur once a month, on the first Monday of the month. It has very general legislative powers, as defined in the city charter law of the State. For instance, it may provide a system of well-kept and well-lighted streets, a police force, and a fire department, and it may provide for the regulation of various occupations and trades in the city. It may erect a city jail. It may erect a city hospital. It may "do all acts and make all regulations which may be necessary or expedient for the

promotion of health or the suppression of disease." A very important power of the council is the granting of franchises. "Communities may grant the use of their highways to private corporations that render important public service, such as street railways, telephone and telegraph companies, and water and gas companies. The right to use public property in this way is called a *franchise*. In return for the privilege of a franchise the corporation must render definite services to the community, such as supplying light of good quality, water that is pure, street car services that can be depended upon."¹ Cities have sometimes given away franchises and later bought them back, paying a large price for them. Cities in this State cannot grant franchises to street car companies for a longer term than fifty years.

The legislative power of the council extends to all subjects of interest to the city with two important exceptions, namely, Education and Parks. Education is in the charge of a Board of Education, independent of the council, and having power to appropriate money and levy taxes for the support of the city schools. City parks are in the charge of a park board (if the voters elect such a board), independent of the council, and having power to appropriate money, borrow money, and levy taxes for the purpose of creating and maintaining a park system. Thus the citizen of a city may find himself taxed by his State, his county, his city, his school district, and his park board. But the law fixes a limit to the tax in each case, at so many mills on the dollar, that he may not become overburdened.

2. Mayor and Departments.—The mayor is the chief

¹ Dunn, "The Community and the Citizen," p. 50.

executive officer of the city; he "shall take care that the laws and ordinances are faithfully executed." His powers and duties are various. He *presides* over council meetings, sends an annual message to the council, and has the *veto* power. The council can pass an ordinance over his veto by a two-thirds vote. He has the power of *appointment*, with the council's approval, of a city auditor, assessor, attorney, engineer, health officer, chief of police and policemen, and of such other officers as may by the city council be deemed necessary or expedient. He has the power of *removal* of any officer appointed by him whenever he thinks the interests of the city demand such removal, but he must report the reasons for such removal to the council.

The Departments of the city carry out most of the administrative work of the city. The duties of the city auditor, treasurer, and assessor are apparent from their names. Likewise the duties of the police force.

The *city engineer* must be a practical surveyor. He makes surveys, profiles, plans, and estimates for the city as the council may direct.

The *city attorney* renders legal services to the mayor and council in all cases where his professional aid is needed.

The *city board of health* is made up as follows: four aldermen, appointed by the mayor, the city engineer, and one physician, appointed by the mayor. The physician is known as the *Health Officer*. It is the duty of this officer to quarantine properly all cases of scarlet fever, diphtheria, or other contagious, epidemic, or infectious diseases in the city, regulate vaccination, record vital statistics, and in general to safeguard the health of the people.

Various other departments may be created by the city council as needed, such as Fire, Water, and Streets. The charity work of the North Dakota city is performed either by voluntary associations of citizens, or by the county. Free libraries exist in many cities; city councils have power to establish and maintain such libraries.

3. Police Magistrate and City Justice of the Peace.—

The police magistrate has exclusive jurisdiction of all offenses against the city. He has concurrent jurisdiction with the justices of the peace of the county in all other actions, civil and criminal. The city justice of the peace has the same functions and jurisdiction as justices of the peace within his county.

II. THE COMMISSION PLAN

In 1907 North Dakota passed a law providing for the Commission Plan of city government. The first three cities to accept this plan were, in order, Mandan, Bismarck, and Minot. The first city to vote down the proposition of changing to this form of government was Fargo. Whenever a city has reached a population of 2,000 or over, it may change to the commission plan. The two steps necessary are: (1) A petition asking for the change, and signed by one tenth of the voters, must be presented to the mayor and council; (2) a special election is then held to decide the question, and a majority must vote in favor of the proposition.

Under this plan of city government, the offices of mayor and council are abolished. There is created, instead, a commission of five men, with all the powers of the old

mayor and council concentrated in their hands. They are elected for a term of four years. They are elected at large, and not from any particular ward. One is chosen by the people as president of the board of city commissioners. The commission then assigns the other four members to their appropriate departments, namely, (1) police and fire commissioner; (2) commissioner of streets and public improvements; (3) waterworks and sewerage commissioner; (4) commissioner of finance and revenue. The president of the board acts as chief executive. Meetings are held once a week, and are open to the public. An aye and nay vote must be taken (and recorded in the journal) on all questions involving taxation. To give further publicity to their work, the commission must publish a financial statement four times a year.

The powers of the commission we may classify under two heads: (1) Power to appoint and remove; (2) general legislative powers.

(1) The commission has power to appoint all officers and subordinates in all the departments. It may appoint a treasurer, auditor, city attorney, city assessor, city physician, chief of fire department, chief of police, policemen, a commission of public health, and such other officers as the commission may deem necessary. The commission may remove any or all of the appointees at will, after giving them an opportunity to be heard in their own defense. In short, the power of the commissioners to employ and discharge men is so ample, that full responsibility for the character of the city government must rest entirely on their heads.

(2) The commission fixes all salaries; it makes rules gov-

erning all departments; it has the taxing power; and it has power to borrow money and issue bonds therefor under the debt-limitations laid down by the constitution.

Franchises to public service corporations are also granted by the commission. The city may furnish water and light to the inhabitants from its own municipal plants, or franchises may be granted by the commission to water, gas, and electric light companies. It may also grant franchises to street car companies, but not for a longer term than fifty years.

Summary.—The student will note that under this plan of city government, very great power is concentrated in the hands of five men, and that they are then held wholly responsible for its use and abuse. Which is the better plan for North Dakota cities is a question which must be left to each city to decide for itself.

QUESTIONS ON THE TEXT

1. Give Bryce's test of good city government: his criticism of our success.
2. Show that our cities do not enjoy home rule.
3. What is a city charter? Where is it found?
4. Give the steps preliminary to organizing a city.
5. Name the two forms of city government.
6. What are the branches of government under the first form?
7. Name the elective and the appointive officers under this form.
8. When is the city election held? Why? Term of office of elective officers.
9. How is the council composed? Who presides?
10. Give three classes of powers exercised by the council.
11. State in full the council's control of city finances. Its limitations.

12. How are local improvements paid for? Explain this species of tax.
13. How is the legislative work of the council carried on?
14. State the legislative powers of the council.
15. What is a franchise? What is the importance of franchises?
16. What two important functions are not under the legislative power of the council? State why.
17. What are the mayor's powers and duties?
18. Describe in detail, so far as you are able, the work of the city departments.
19. When did North Dakota pass a law providing for the commission plan of city government?
20. In what respects does this plan differ from the first plan?
21. How may cities adopt this plan?
22. Who are the elective officers of a city under this plan? How elected and for what term?
23. Who are the appointive officers? How appointed and removed? How are salaries fixed?
24. State in full the powers and duties of the commission. Name the four departments.
25. How is publicity secured?
26. How are franchises granted?

QUESTIONS SUGGESTED BY THE TEXT

1. If you live in a city, secure the published proceedings of your city council. Note the subjects discussed, and the action taken by the council.
2. How is the charity work done in your city?
3. Arrange in parallel columns, the names of the officers, their powers and duties, and terms of office under the two forms of city government.
4. Problem: (a) What is the tax levy limit (in mills) for the State, county, city, school, and park district? (b) Find a taxpayer's maximum burden of taxation when he is assessed at \$1,000, it being granted that he pays a tax for each district named above, and that the tax limit is reached in each district. Work out the same problem for a man who lives

in the country and pays a State, county, township, and school tax. Compare answers.

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NORTH DAKOTA CITY CHARTERS

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CHAPTER XXIII

ELECTIONS AND POLITICAL PARTIES

"Universal suffrage, as it now exists in the United States is not only a great element of safety in the present day and generation, but is perhaps the mightiest educational force to which the masses of men ever have been exposed." BRYCE, "American Commonwealth," Vol. 1, p. 635.

Since good government depends so largely on the character of the men in office, it is very important that we understand clearly our methods of choosing men for office. This chapter describes (1) Nominations, (2) the Campaign, and (3) Election.

1. Nominations.—The law of our State requires the county auditor to provide ballots for every election in which his county participates, and "he shall cause to be printed on the ballots the name of each candidate."¹

This imposes on the county auditor an important duty. Who shall be *named* on the ballot, that is, "nominated"? The answer to this question is an explanation of one of the greatest problems in our government to-day, namely, that of political parties and nominations.

Need of Nominations.—If at an election each voter should cast his vote for the man of his individual choice, it might easily happen that among the many men voted for no one would receive a majority of votes, and no one would

¹ "North Dakota Code of 1905," Sec. 615.

fairly represent a large number of citizens. It is evidently best that the choice of the voters be limited to a few men who are nominated in advance as the regular candidates for the office in question. They may be "party" candidates or "independent" candidates. There has grown up in this country a custom, therefore, of nominating candidates by political parties; hence each voter casts his vote for a candidate who has already been nominated, and whose name is printed on the ballot by the county auditor. Let us examine the method by which this nomination is made.

Method of Nominating. *A. The Old Way—Caucus and Convention System.*—Prior to 1905 in North Dakota the county auditor placed such names on the ballot as were properly certified to him by each political party. The method was very simple. Each party, according to the law, held a caucus in each voting precinct, where delegates were chosen to a county convention. Here candidates for county office were nominated and delegates chosen for a State convention. In the State convention candidates for State office were nominated. The presiding officer and secretary of each convention signed and certified the convention's list of nominations. These nominations, upon reaching the county auditor, were then looked upon as the regular party nominations, and as such were printed under the party's name on the ballot. But, in practice, only a few people ever interested themselves in nominating candidates. This system led naturally to strong party organization, and this "organization" came to be known by its enemies as the "machine." With the machine came the "boss" and the "ring."

"It is the business of a boss," says an astute writer, "to provide a candidate for every elective office; of course, if he be a wise boss, he will weigh and welcome suggestions, from whatever source they may come, which can aid him to do this work satisfactorily—at least to himself. Moreover, since a boss, like Saturn, is usually encircled by a 'ring,' or usually by two or more concentric rings, he is habitually assisted in his labor by the counsels of his lieutenants and apprentice bosses, retaining, however, for himself the last word as to these matters and as to all others. Where legalized primaries [caucuses] exist, he must, in substance, submit his report as a Nominating Committee of one, to such voters of his party as may choose to attend these primaries; and it is possible that his report may be wholly or in part rejected [but this is very unlikely]. In any event the legal voters will pass upon his recommendations at the polls."¹ If one party is strong and confident, the candidate need not possess great merit. If there are two strong parties and many independent voters, the boss must select a candidate carefully. "We must first realize," continues the writer just quoted, "that the duties thus discharged by the boss are laborious and unpleasant duties, unpleasant even to the boss. . . . Men of the right sort for the office to be filled must be not only discovered, but urged, entreated, persuaded, even hectored, wheedled, or in some sort bullied into making the sacrifices involved for a capable and well-trained American of high character in serving the public."

¹ Chas. J. Bonaparte, "The Elective Boss," *Outlook*, Vol. 93, p. 773. December 4, 1909.

The caucus and convention system has been abolished in North Dakota for all candidates save those for the offices of President and Vice President of the United States.

B. The New Way—The Primary Election.—In 1905 North Dakota passed a Primary Election Law, and in 1907 this law was greatly extended.¹ The law aims to do away with the boss, but maintains the system of nominating *by a political party*. It does this by abolishing the old caucus and conventions, and putting in their place one "primary election," held in the month of June, for the purpose of naming the various candidates.

"There shall be held," says the law, "in lieu of party caucuses and conventions, a primary election in the various voting precincts of the State, for the nomination of candidates for the following offices to be voted for at the ensuing general election, viz., members of Congress, State officers, county officers, district assessors, and the following officers on the years of their regular election, viz.: Judges of the supreme and district courts, members of the legislative assembly and county commissioners, and United States senator in the year previous to his election by the legislative assembly; provided, however, that the provisions of this act shall not be construed to include or provide for the nomination of presidential electors or delegates to national conventions. Such delegates to national conventions shall be nominated and elected, and presidential electors nominated as now or hereafter may be provided for by the various State central committees."

The candidate seeking nomination for a county, State,

¹ "Session Laws of North Dakota," 1907, Ch. 109.
Govt. No. Dak.—19

or Congressional office must first circulate a petition and secure the requisite number of signers. This entitles him to a place on the primary ballot in June. He is probably one of several candidates seeking nomination to the same office. The primary election then determines which candidates are duly nominated to represent their party in the regular November election. The voter at the primary election must call for the ballot of his party. Each party has a separate and distinct ballot.

The first function of the primary election, then, is to *nominate* party candidates for office.

The second function of the primary election, now to be described, is the duty of *electing* party committees and thus preserving political parties. At the primary each voter may write (in a space left for that purpose) the names of not to exceed three qualified electors of the precinct for members of his party precinct committee. The three having the highest number of votes constitute such committee, and the one having the largest number is the chairman. The chairman of these various precinct committees form the county committee of each county. The county committee must meet (in August following the primary) and organize by selecting a chairman, a secretary, and a treasurer. This committee also selects one person as member of the State central committee. The State central committee meets in September at the State capital and organizes, and may issue a party platform. To this State central committee falls the duty of nominating, or providing for the nomination of, the presidential electors, and the second duty of providing for the party's representation in the national

committee and in the national convention that nominates the President and Vice President. We see by this brief description that a complete system of party organization is provided for.

There are three other important things to be noted in connection with the Primary Election Law above described.

A separate, *nonpartisan* judiciary ballot is provided for the nomination of supreme and district judges, as described in Chapter XIX.

United States Senators can only be *nominated* by the voters; they must still be elected by the legislative assembly, according to the provisions of the United States Constitution.

The primary election *in cities* is held in March, when candidates are named for the elective offices to be filled at the regular April election. The city auditor must see that duly nominated candidates are listed on the ballots.

C. A Third Way of Nominating—Independent Nominations.—For a candidate seeking office, who does not desire to run for office as the nominee of any political party, there is one method open. By petition, he may have his name placed on the regular election ballot, in a separate column marked "Individual Nominations." Nominations made by this method, if successful, would tend to alter and even abolish present political parties. For obvious reasons this method in actual practice is confined almost wholly to city elections. A candidate without the support of a political party is usually defeated at the election.

2. The Campaign.—Between the nomination and the election of the candidate comes the political campaign.

We might say that the two great functions of a political party have long been to nominate candidates and to conduct the preëlection campaign. Parties have stood the expense of this, and the expense is frequently great. Speakers and campaign literature must be sent out. Under the third system of nomination—the independent or non-partisan plan—the candidate himself must usually conduct and finance his own campaign.

3. The Election.—The qualifications for voting are set by the constitution of the State. There are two classes of electors. (1) Every male citizen of the United States, 21 years old or over, who has resided in the State one year, in the county six months, and in the precinct ninety days. This includes civilized Indians who have given up their tribal relations, and *naturalized* foreigners, but not foreigners who have taken out only their first papers. (2) Female citizens, with the qualifications described above, may vote in all school elections, including election of county and State superintendent.

Voting is done by “secret ballot.” That is, the voter receives his ballot, withdraws with it into a private booth where no one can see him mark it, folds it, and sees it deposited in the ballot box still folded. The “Australian ballot” is now in general use. This is a ballot containing on one sheet, in parallel columns, the names of all the parties and all the candidates. This ballot enables the voter to vote a secret ballot, and a ballot, therefore, which is harder to control by corrupt means.

The usual officers of an election are the inspector, two judges (one belonging to each leading political party), and

two clerks, who keep a record of the names of those voting, in order to prevent "repeating." In villages and cities of over eight hundred population, the law requires a registration of voters before election day, to prevent repeating and other election frauds.

In our form of government very much depends on an intelligent and pure nomination of candidates for office and on an enlightened and clean vote at the election. "The fate of republican government," says Hart, "depends upon the ability of the people to express their will without influence or fraud. To stuff registration lists with fictitious names, to miscount the votes, to throw out legal votes on small technicalities, to accept ballots made up in defiance of the provisions of law—these are betrayals of republican government in the hands of its friends."¹

QUESTIONS ON THE TEXT

1. What does Bryce consider the effect of universal suffrage to be?
2. What are the three ways of nominating candidates for office?
3. State the election duties of the county auditor.
4. State the need of nominations.
5. Explain in detail the old way of nominating candidates in this State.
6. What is the name of this system? What did it lead to?
7. Define and describe fully, the boss, ring, and machine.
8. Did the boss have a real public service to perform? Why?
9. Give in detail the provisions of the Primary Election Law of this State: aim, date of primary election held, what offices affected, methods of making nominations.
10. What is the second function of the primary election? Explain the existing committee system.
11. How are judges nominated?

¹ Hart, "Actual Government," p. 85.

12. How are United States Senators nominated?
13. How is the President nominated?
14. Do cities have a primary election?
15. Is a primary election nomination a party nomination? Explain.
16. How may a citizen secure a nonpartisan nomination for office?
17. What are the advantages and disadvantages of this method?
18. Describe a political campaign.
19. Discuss the election: qualifications of voters (two classes); the ballot; officers of election; need of and significance of clean elections.

QUESTIONS SUGGESTED BY THE TEXT

1. Discuss (a) evils, and (b) benefits of political parties.
2. Should we have nonpartisan nominations? Is this possible?
3. State the arguments for and against "independent" nominations.
4. What is the ideal way of nominating candidates for office?
5. Should we elect a boss? Reasons for and against.
6. Compare the old way and the new way of making nominations in North Dakota.

REFERENCES

- For Election Laws, see "North Dakota Code," 1905, Ch. 8; Session Laws, 1907, Ch. 109; Session Laws, 1909, Ch. 32.
- For a general discussion of the party system, the machine, rings, and bosses, see Bryce, "American Commonwealth," Vol. 2, Chs. 53-75; Hart, "Actual Government," Chs. 4, 5.

CHAPTER XXIV

REVENUE AND EXPENDITURE

"The legislative assembly shall provide for raising revenue sufficient to defray the expenses of the State for each year . . . and also a sufficient sum to pay the interest on the State debt." State Constitution, Sec. 174.

Introductory.—For what purposes may a State properly spend money? Many great thinkers have tried in vain to show what are the "proper functions of the State." As yet very few principles governing this question have been established. Expenditures must be constitutional; they must be for a public purpose. Expenditures for the legislative, executive, and judicial branches are of course necessary and proper. Other expenditures are frequently made, and each case, as it comes before the legislative assembly, must be settled on its own merits. For instance, may the State own and operate a street railway? Yes, the State has done so, at Bismarck. May the State manufacture and sell commodities to the farmers? The State does manufacture and sell binder twine, in connection with the State prison.

A similar question arises as to State revenue; what is a proper source of income? Where shall the money come from? This too must be settled by the legislature. In this chapter we shall merely examine and classify the objects of expenditure, and likewise study and classify the sources of

income. But the student will bear in mind that the objects of expenditure and the sources of income are not fixed, but vary somewhat from decade to decade as the State grows older and new conditions arise.

1. Expenditures.—There is a limit, fixed by the constitution, to the amount which the State may expend; for the taxes laid by the legislature must not “exceed in any one year four (4) mills on the dollar of the assessed valuation of all taxable property in the State,” in addition to enough money to pay the interest on the small State debt. As we shall note under “Sources of Revenue” below, the State has a large income from other sources than taxation, and this must be added to the four-mill tax limit to find the actual limitation on expenditures. The constitution limits the *objects* as well as the *amount* of expenditures. Money cannot be used for private purposes, or to assist in internal improvements. This important clause of the constitution reads as follows: “Section 185. Neither the State, nor any county, city, township, town, school district nor any other political subdivision shall loan or give its credit or make any donations to or in aid of any individual, association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the State engage in any work of internal improvement unless authorized by a two-thirds vote of the people.” Since “internal improvements” include wagon roads, the State cannot assist the county or township in constructing good roads, unless authorized so to do by a two-thirds vote of the people.

These constitutional limitations on the amount and

objects of expenditure have been placed on the legislative assembly because the experience of other States, without such limitations, has been full of bitter lessons. If these limitations are too narrow, they can be changed by amending the constitution.

Objects of expenditure.—The expenditures of the State may be classified under fifteen heads, as shown on the table below.

EXPENDITURES, 1906

1. State Legislature	(Not in session)	
a. Members		
b. Other expenses	\$ 4,459.63	
		\$ 4,459.63
2. State Executive Department		
a. Eight executive officers . .	\$44,588.23	
b. Boards, Commissions, etc . .	76,593.80	
c. Law enforcement, Rewards, etc.,	9,814.72	
		\$ 130,996.75
3. State Judiciary (Supreme and District Courts)		51,651.00
4. Education (Public School System)		546,660.21
5. State Institutions		1,149,952.06
6. Trustees of Institutions		6,830.39
7. Militia		13,349.49
8. Printing		17,984.66
9. Interest		40,911.97
10. Bounties and Subsidies (Wolf Bounty)		32,475.50
11. Fairs and Celebrations		15,262.00
12. Historical Society		2,389.67
13. State Library		1,598.66
14. Miscellaneous		54,021.28
15. Debt paid		6,350.00
Total expended		\$2,074,893.27

Total expended (p. 299)	\$2,074,893.27
Permanent funds invested	339,559.87
Balance on hand	985,579.23
Total transactions	\$3,400,032.37

The largest item of expense is for the State institutions. Education is paid for by taxation by the local school district, to a large extent, and hence is not a large object of expenditure by the State. As explained later in the chapter on Education, the State has a large Permanent School Fund, and does not raise money by taxation to support the public schools. To find the cost of education, we must add the State and local expenditures together. The State has a large annual outlay for "bounties," this sum being given for the killing of wolves. The State has, at various times, given money to encourage the planting of trees, the manufacture of starch from potatoes, the promotion of the sugar-beet industry, etc., but it is a debatable question whether these are "proper" objects of expenditure.

2. Revenue.—The amount of the State's income is determined by the amount of the expenditures. The income must, of course, be large enough to cover all expenses. The sources of revenue are classified and exhibited in the table below:

REVENUE, 1906

1. Tax	\$1,014,938.85
2. Fees and Licenses	84,970.81
3. Fines and Forfeitures	15,914.38
4. Industries	317,111.29
a. Street Railway	\$ 1,406.85
b. Twine Plant	315,704.44

5. Land	\$1,040,910.77
a. Rent	\$ 64,315.32
b. Sale	768,781.69
c. Interest on "land contracts"	207,813.76
6. Interest	450,671.62
7. United States	34,451.64
8. Miscellaneous	26,579.49
Total Receipts	\$2,985,548.85
Invested funds returned for reinvestment	42,289.02
Balance on hand	372,194.50
Total Transactions	\$3,400,032.37

Let us now examine these sources of income, taking them up mostly in reverse order.

United States.—The Federal government makes a large donation to the State each year to promote education and the art and science of agriculture. Aid is also given to the State Soldiers' Home.

Invested Funds Returned.—It is very evident that as the State sells its public lands (some 3,000,000 acres, the minimum price being \$10 an acre), there arises a vast cash fund, which cannot be expended. It is a permanent fund. It must be invested, and only its income used, as explained under "Land" below. As these invested funds fall due from time to time, they are, of course, paid in for reinvestment. No other use can be made of them.

Interest.—The invested, permanent funds of the State grow larger year by year. The interest, accordingly, from these funds, grows larger also. This income can be used only for specific purposes—for the support of public schools, and for the support of those State institutions which have a

land grant (see page 214). The rate of interest received on these permanent funds varies from four to six per cent. The State constitution limits the investment of these funds strictly to the following four classes of investment: (1) North Dakota State, county, city, township, school district, and drainage bonds; (2) bonds of other States that have never repudiated any of their indebtedness; (3) United States bonds; (4) first mortgages on North Dakota farm lands, not exceeding one third the actual value of the land.

Land.—By the terms of the Enabling Act, the State became a large landlord. Income is derived from this land in the following three ways: (1) rent; (2) sale; (3) interest on land contracts. Land is rented at auction to the highest bidder, the renter having the right to use it for meadow or pasture purposes, but not to break the sod. In some cases, where the land cannot be rented for a fair price, a "hay permit" is sold for a few dollars, giving the purchaser the right to cut the year's hay crop. Public lands in each country are appraised by a board (county auditor, county superintendent of schools, chairman of board of county commissioners), and then offered for sale at a public auction to the highest bidder. The bid must be as high at least as the appraised value. Some land has sold as high as fifty dollars an acre; it cannot be sold for less than ten. Since much public land in the undeveloped parts of the State is not yet worth ten dollars an acre, it must remain unsold until its value has risen. Meanwhile it can be rented, or "hay permits" to it can be sold, or it can be left idle.

The sale of lands brings in a large income to the State. The general control of public lands and of income from their sale is in the hands of a very important State board, namely, the Board of University and School Lands. This board is composed of five persons, the governor, superintendent of public instruction, attorney-general, secretary of state, and State auditor. This board appoints a Land Commissioner to carry out the actual administration of the lands, their appraisement, sale, rental, and the investment of funds arising therefrom. The proceeds from land sales are sacredly guarded by the State constitution in these words: "The proceeds of all such lands . . . shall be and remain perpetual funds, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the State, and the State shall make good all losses thereof."

The "interest and income" referred to above comes from three sources—rent, hay permits, and interest on land contracts.

Interest on land contracts arises in this manner. The public lands are sold on twenty years' time. The purchaser pays one fifth down in cash; one-fifth at the end of five, ten, fifteen, and twenty years respectively. When the first payment is made, the State gives the purchaser not a *deed*, but a land contract. The purchaser pays six per cent. interest, in advance, on the amount due the State. This

he does annually for twenty years, till the land is entirely paid for. He then receives a deed.

Industries.—The State does not operate any industries for the sake of making money. A small trolley line was constructed and operated by the State at the capital city to supply an urgent need of transportation facilities. The twine plant at the State prison benefits the prisoners by giving them healthful employment, and at the same time furnishes to the wheat growers of the State binder twine at a low price. A few other industries are conducted by the State, and incidentally produce a small revenue.

• **Fines, Forfeitures, Fees, Licenses.**—Violation of certain State laws is punished by fines or forfeitures. This is a small source of revenue. Many corporations pay small fees to the State for the privilege of doing business, for securing charters, and so on. The State oil inspector and certain other officials collect fees for the services which they render, and turn these fees over to the State treasury. This is a source of revenue of growing importance.

Taxation.—It is from direct taxation that the running expenses of the State are very largely met. A careful study of the table of revenue, pages 300, 301, will make this very apparent.

The amount of State tax to be levied for current expenses is limited by the constitution to four mills on the dollar, or two fifths of one per cent. of the assessed valuation of the taxable property of the State; except that enough money may be raised in addition for the payment of interest on the public debt, which is a very small item indeed.

State taxes are of three kinds, as follows: (1) General Property Tax, (2) Corporation Tax, (3) Inheritance Tax.

The General Property Tax is depended on by the State, as by the local subdivisions, for the bulk of revenue. The assessment of property by the local assessor (under the general property tax system), the "equalizing" of the assessment, and the collection of the tax by the county treasurer are all described in a preceding chapter (page 264). We may merely add at this point an account of the work of the State Board of Equalization. This board is composed of five persons—the governor, auditor, treasurer, attorney-general, and commissioner of agriculture and labor. The State legislature, of course, spends the money, that is, makes the appropriations for the various State purposes. This amounts to the same thing as saying that the State legislature levies the tax on the people. The amount of the appropriation being known, the State board of equalization determines and announces the "rate" of the tax. The "equalized" assessment of each county is before this board at its annual meeting. The important duties of the board are twofold: First, it must equalize classes of property as between different counties; second, it must make the assessment of the railroads of the State, and also of the following public service corporations, none of which must be assessed by the local assessor: telephone companies, telegraph companies, street car companies, and, in short, all companies engaged directly or indirectly in the carrying of persons, property, or messages.

Upon the assessment of these companies by the State

board the county treasurers collect the taxes, exactly as on the general property assessed by the local assessor.

The Corporation Tax, as it is known in some States, is very little used in North Dakota. All corporations—with one exception—come under the general property tax, and their property is taxed like other land and personal property. The one exception is insurance companies. They pay to the State a gross earnings tax of two and one half per cent. on the gross premiums received within the State.

The Inheritance Tax in North Dakota is what is usually called the collateral inheritance tax. The rate of the tax is two per cent. It applies to all estates in the State, over and above \$25,000, left to *collateral* heirs. That is, the tax applies to property which is not left to a father or mother, husband or wife, child, or any *lineal* descendant.¹ The tax is paid to the State treasurer, not to the local government. Up to the present time this tax has produced very little revenue, but it will prove important in the future.

3. Debt.—The constitution limits the State debt to \$200,000. In addition to this amount, there was a debt of \$540,000 inherited from Dakota Territory. This is a very small debt, compared with the debt of many cities, or with the national debt for many years after the Civil War. The State's credit is good, and consequently the interest rate on the State debt is low, being only four per cent.

QUESTIONS ON THE TEXT

1. What are the proper "functions" of a State?
2. How are the amount and objects of State expenditure limited?
3. What are these limits? Can they be changed?

¹ "North Dakota Code," 1905, Secs. 8320-8339.

4. Name fifteen important objects of expenditure.
5. What is the chief object of expenditure?
6. How can we find the total amount spent in the State for education?
7. Explain the outlay for "bounties and subsidies."
8. What are the eight sources of State income?
9. Which is the chief source?
10. What funds does the State invest? In what securities?
11. Can a farmer borrow money of the State? How?
12. Where did the State get its land? How much land has it?
Explain methods of rent, hay permit, and sale.
13. State the significance of these public lands.
14. Explain "interest on land contracts."
15. What industries, if any, does the State operate?
16. In what way does the State secure income from fines, fees, and licenses? Illustrate.
17. What three taxes are used by the State?
18. Explain the administration of each; rate, to what applied.
19. What is the debt limit of the State?

QUESTIONS SUGGESTED BY THE TEXT

1. Problem: When the assessed value of the taxable property of the State is \$350,000,000, how much revenue will a four-mill tax produce?
2. Problem: Mr. A buys 160 acres of school land at \$50 an acre. At the end of twenty years' time, how much money will the State have received from this sale, including the interest on the land contract?
3. Find the cost of education for one year in the State.
4. Give the amount of State expenditures last year, properly classified as to objects of expenditure.
5. Give the amount of State income last year, properly classified as to sources of income.

REFERENCES

"North Dakota Code," 1905.
Session Laws, 1907, and later.
Annual Reports of State Treasurer.
Govt. No. Dak.—20

CHAPTER XXV

EDUCATION

"In the United States the ballots of ignorant voters are more to be dreaded than the muskets of foreign soldiers."

State Educational System.—The State has provided a complete system of free public schools, beginning with the primary grades, and continuing up through the high school. The State has also provided free institutions of higher education for those desiring to continue their preparation beyond the public school. These higher institutions are differentiated to meet the various needs of the State, and are as follows: School of Forestry, Manual Training School, School of Science, Normal Schools, Agricultural College, School of Mines, and State University.

The public school system is represented by the country school, the rural consolidated school, the village consolidated school, the village and city school, and the village and city high school. High schools are of three classes, depending upon the length of their courses of study: the first class high school offering four full years of work; the second class, three years; the third class, two years. The rural high school, familiar in some of the older States, is not yet developed.

The administrative control of public school education represents a chain of three links: (1) the State superin-

tendent of public instruction, with general supervision over the whole State; (2) the county superintendent, over the schools of the county; (3) and the teacher, over the local school. By this excellent three-link system the educational work of the State is standardized and keyed up to a high point of efficiency.

The School District.—There are different kinds of school districts, as there are different kinds of schools. There are



The First Rural Consolidated School in North Dakota

three types of school districts: (1) common school districts, found in the country, and (2) special and (3) independent districts found in the towns. Common school districts are of two systems, (a) township and (b) district. The old, first-organized country districts in the Red River valley belong to the district system. Each district represents an area two or three miles square, and has a schoolhouse in the center or near the center. This may be called the old-fashioned system, inherited from our forefathers. The township system is a system where a school district is six

miles square, covering exactly the same area as the township. The district has, as a rule, three, four, or even five schoolhouses, depending on the number of inhabitants in the township. But, in recent years, some townships have abolished the little separate schoolhouses and have put up one large central building known as a Rural Consolidated School. This may be called the new-fashioned school, since



Village Consolidated School

it has come into use only within the last generation. The township system is in use throughout our State west of the Red River valley.¹ The consolidated school is now in use in a great many townships. It is considered much the best of the three plans just named.

In cities and villages of over two hundred population we find the special district or the independent district. These districts have certain advantages over the common dis-

¹ The district system is found only in five counties, namely, Pembina, Walsh, Grand Forks, Cass and Barnes.

tricts, such as power to maintain a high school, and power to require more preparation on the part of the teachers. The State school law provides for the details of organization, and fixes the powers and duties of school districts. In the table below, showing the different kinds of districts, it will be noticed that the independent district has one advantage over all others—its board has the power to borrow money.¹ In the other districts the voters must decide the question of a bond issue.

NORTH DAKOTA SCHOOL DISTRICTS

	Common	Special	Independent
Officers	School Board of 3 directors	Board of education, 5 members	Board of education, 1 member from each ward
	Treasurer elected	Treasurer city treasurer	Treasurer city treasurer
	Clerk hired by board	Clerk hired by board	Secretary hired by board
	Not a member	Not a member	May or may not be a member
Term of Office	Director, 3 years Treasurer, 2 years	Board, 3 years	Board, 3 years
Elected, when	Elected 3d Tues- day in June	Elected 3d Tues- day in June	Elected 3d Mon- day in April
Duties of Board	1. Maintain schools 2. Levy school tax	1. Maintain schools 2. Levy school tax	1. Maintain schools 2. Levy school tax 3. Issue bonds

¹ There are but few independent districts in the State. On July 1, 1907, they were Grand Forks, Grafton, Fargo, Jamestown, Walcott, and Lidgerwood. When the Territory became a State in 1889 there were seventeen independent districts. Most of them have reorganized as special districts.

Flags for Schools.—The law requires every school district to own a flag—one flag for each schoolhouse in the district—and to keep the flag displayed each school day if the weather permits.

Free Textbooks.—Many districts now furnish free textbooks to the pupils. The law provides that every district must do this (a) when the board so desires, or (b) when two thirds of the voters of the district sign a petition requesting it.

The School Board.—The three kinds of school boards we have seen in the table on page 311. The size of the board depends on the kind of district—three members for the common district, five for the special, and five or more for the independent. In the independent district there is always one member for each ward, and, if there is an even number of wards, an extra member chosen at large. The powers and duties of these boards have also been indicated. The board must look after the business side of the school—see that enough money is forthcoming to pay the teacher, furnish fuel and supplies, and provide adequate school buildings. The board therefore has the taxing power. This is an important power, since the school tax is usually the heaviest tax the voter has to pay. In addition to their business duties, the board has the duty of hiring teachers, and, in cases of necessity, of dismissing teachers. There is no more important organ of local government than a school board. They *legislate* (i. e., levy taxes and make rules for their district) and they also *administer* the school laws of the State relating to their district. This gives them the power both to advance and to hinder the progress of education.

State High School Board.—It is the policy of the State to grant aid in the shape of a cash subsidy to every classified high school. In the year 1899 a sum of money was first divided among the high schools of the State. By a law passed in 1907 the amount of aid was greatly increased, the total amount being \$45,000. This is divided as follows



City High School, Jamestown

among high schools: (1) to the school giving four years of high school work, \$800 each year; (2) to the school giving three years of high school work, \$500 each year; (3) to the school giving two years of high school work, \$300 each year. In charge of this fund is a State High School Board, composed of three persons—the governor, the superintendent of public instruction, and the president of the State University. This board has power to establish suitable rules

and regulations pertaining to high school examinations, classification of schools, and courses of study. The board furnishes examination questions twice each year to each classified high school. The board also causes each school receiving aid to be visited by a representative of the board at least once each year. The board has selected for this purpose a "High School Inspector," who is an experienced and expert teacher. In creating a State high school fund, a State high school board, and a State high school inspector, the State has taken three steps forward in her work of educational improvement.

The Teacher.—The qualifications for teachers are these: a clean moral character; age, at least eighteen years; and a teachers' certificate. Certificates are of three grades, namely, second grade, first grade, and State certificates. The third grade certificate has been abolished. The second grade is the lowest certificate and \$45 is the lowest monthly wage of a second grade teacher.

A *Teachers' Institute* is held each summer in each county, or in each group of counties that combine for the purpose of holding a joint institute. This institute is under the joint direction of the county superintendent and State superintendent, and is intended to furnish the teacher both information and stimulation. It is the duty of each teacher, who is not already a college graduate, to attend the institute.

Branches to be Taught.—Teachers in the common schools must teach the following branches; orthography, reading, spelling, writing, arithmetic, language lessons, English grammar, geography, United States history, civil government, physiology and hygiene, giving special instruction

concerning the nature of alcoholic drinks and other narcotics, and their effects upon the human system.

The Pupil.—The law provides for *compulsory education* for children of school age. *School age* means from the age of eight to fourteen years. Every child of school age must be kept in a public school in each year during the entire time the public schools of the district or city are in session, except that this rule does not apply to (1) children taught in parochial or private schools where the same branches are taught as in the public schools; (2) children whose work is necessary to the support of the family; (3) children already possessed of a knowledge of the common branches; (4) children mentally or physically unfitted for the public schools. “Compulsory education,” so called, is designed to assist in preventing the curse of child labor in factories, mines, and workshops, an evil from which some of our sister States have suffered much. The North Dakota child labor laws forbid the employment of any child under fourteen years of age in any mine, factory, workshop, store, business office, telegraph office, or hotel. The compulsory education law, mentioned above, wisely supplements this child labor law. Some cities employ a truant officer to “compel” children of school age to be in the school and off the streets. The State’s attorney always has this power of compulsion, provided complaint is made to him by teacher, principal, or superintendent.

The Support of Schools.—In nothing is the State more generous than in the support of schools. For the support of schools and the erection of school buildings there are three principal sources of income: (1) Taxation, (2) State Tuition

Fund, and (3) Borrowing. Taxation comes first, because most schools do and all schools *should* receive the bulk of their income from taxation. Some districts, however, are able to levy a small tax and receive the bulk of their revenue from the State tuition fund. Borrowing is used only to secure extensive improvements, such as new buildings, the purchase of more land, etc. The system of support of our schools is very simple, and can be easily understood by a short study of the table below:

SUPPORT OF SCHOOLS

I. Taxation

- (1) District tax, namely, a tax on the property real and personal, in the school district.

Levied by school board.

Limit, 30 mills on the dollar of valuation.

- (2) County Fund, namely, a two-mill tax on all property in the county, and a \$1.00 poll tax on each taxpayer.

Distributed to the school districts according to number of school children in the district.

- (3) State High School Fund, namely, a small tax on all property in the State.

Distributed to classified high schools only, according to class of high school.

II. State Tuition Fund, received from three sources.

- (1) Income from Permanent School Fund.

- (2) Rent of School Land.

- (3) Fines and Forfeitures.

Distributed to each district according to number of school children in the district.

III. Borrowing.—Limit 5% of total valuation of district.

It is evident from the above table that schools derive their support from their district, the county, and the State. In the case of high schools only, does the State levy a tax

on the people. One item in the above table, because of its great importance, needs further explanation, namely, the *Permanent School Fund*. Since this is destined to be a fund of almost fifty million dollars, we should understand clearly its source and its management. The *management* of this fund by the Board of University and School Lands has been described under Chapter XXIV, page 303. The *sources* of this fund are shown in the interesting table below:

SOURCES OF PERMANENT SCHOOL FUND

- I. School Lands. These include sections 16 and 36 in every township, or a total of about 2,500,000 acres. These lands cannot be sold for less than \$10 an acre. The part sold—less than half—has brought from \$10 to \$50 an acre.
- II. Five per cent. of the proceeds of all United States land sold in the State.
- III. Escheats, namely, estates left with no known heirs. Such property “escheats” to the State, and its proceeds are added to the school fund.

As the name indicates, this fund is a permanent fund, and only its income can be used. This income is added to the State Tuition Fund, indeed, forms the larger part of it. The State Tuition Fund is apportioned each year to the schools of the State, in proportion to the children of school age in the district. But the school district is not entitled to receive any of this fund unless it has maintained school *four* months out of the year. Indeed, the county superintendent may raise this requirement to *six* months if he sees fit. Neither can a district receive any of this fund unless it has made a report in proper time showing the enumeration of school children in the district.

QUESTIONS ON THE TEXT

1. Show the need of intelligent voters.
2. Our State educational system is made up of what different schools?
3. What constitutes the "public school" system?
4. How are high schools classified? By whom?
5. Why is our school system a three-link system in its administration?
6. Name the three types of school districts. The subdivisions. Define each.
7. What is the best type of rural school?
8. Where is the "common district" found? The township district?
9. Give the following details for each of the three types of school districts: officers; term of office; when elected; duties of board.
10. What is the law concerning flags for schools?
11. What is the law concerning free textbooks?
12. Discuss the three types of school board,—their powers, their significance.
13. Give a full account of the State High School Board. What three steps forward are represented by the law creating this board?
14. State a teacher's qualifications; name grades of certificates. Define teachers' institute.
15. Name the branches taught in the common schools.
16. What is the school age? State the law on child labor and compulsory education. How is this law to be enforced?
17. How are schools supported? How should schools be supported?
18. Analyze each of the three sources fully, giving its subdivisions, definition of same, and provisions governing them.
19. Does the common school receive any support from a State tax?
20. Show clearly what the State Tuition Fund is. The State High School Fund. The Permanent School Fund.
21. Show the distinction between a *tuition* fund and a *permanent* fund.
22. How is the State Tuition Fund apportioned? Two limitations.

QUESTIONS SUGGESTED BY THE TEXT

1. What branches are required for a State certificate?
2. What branches are required for a first grade certificate? A second grade?
3. Problem: Budget of School District.

Make out a budget of your district for the last school year, using as a model either (A) the common school district, or (B) the independent district below:

A. AMERICUS, SCHOOL DISTRICT 3
July 1, 1905, to June 30, 1906

Receipts

Balance from last year	\$ 15.22
State Tuition Fund	127.80
County fund	117.36
District tax	230.00

\$490.38

Expenditures

Permanent improvements	\$ 8.50
Teachers' wages	315.00
School officers	43.00
Incidentals	49.00

\$415.50

Balance on hand \$ 74.88

B. INDEPENDENT DISTRICT, DISTRICT NO. 1, GRAND FORKS
July 1, 1905, to June 30, 1906

Receipts

Balance from last year	\$ 5,097.65
State tuition fund	19,898.82
County fund	
District tax	48,451.71
Miscellaneous	1,168.02

\$74,616.20

Expenditures

Permanent improvements	\$ 8,881.62	
Apparatus, books	2,589.68	
Teachers' wages	33,774.50	
School officers	433.33	
Interest on bonds	9,311.95	
Miscellaneous	13,123.96	
		\$65,937.69
Balance on hand	\$ 8,678.51	

4. What was the first consolidated school in North Dakota? Date of its organization?
5. What were the receipts last year by the Permanent School Fund, from the 5% of the proceeds of United States land sales in North Dakota?

APPENDIX A

ARTICLES OF CONFEDERATION

[NOTE. While the Declaration of Independence was under consideration in the Continental Congress, and before it was finally agreed upon, measures were taken for the establishment of a constitutional form of government; and on June 12, 1776, a committee of one member from each colony was appointed "to prepare and digest the form of a confederation to be entered into between these Colonies." One month later, the committee reported a draft of the Articles of Confederation, which underwent a thorough discussion in Congress from time to time until November 15, 1777; on which day "Articles of Confederation and Perpetual Union" were finally agreed to in form. A copy was then sent to the legislature of each State, which was asked to authorize its delegates to ratify the same in the Congress of the United States; and in that event they were to become conclusive.]

A ratification of the articles, accordingly, was signed by the delegates of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Virginia, and South Carolina on July 9, 1778; by North Carolina on July 21, 1778; by Georgia on July 24, 1778; by New Jersey on November 26, 1778; by Delaware on May 5, 1779, and by Maryland on March 1, 1781. On March 2, 1781, Congress assembled under the new form of government.]

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our names, send greeting:

Whereas the delegates of the United States of America in Congress assembled did on the 15th day of November in the year of our Lord 1777, and in the second year of the Independence of America agree to certain Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz.:

"ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES OF NEW HAMPSHIRE, MASSACHUSETTS BAY, RHODE ISLAND AND PROVIDENCE PLANTATIONS, CONNECTICUT, NEW YORK, NEW JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, AND GEORGIA

ARTICLE I.—The style of this confederacy shall be, "The United States of America."

ART. II.—Each State retains its sovereignty, freedom, and independ-

ence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled.

ART. III.—The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade or any other pretense whatever.

ART. IV.—The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided, also, that no imposition, duties, or restriction, shall be laid by any State on the property of the United States or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up, and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given, in each of these States, to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V.—For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years, in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in any meeting of the States and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ART. VI.—No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king; prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No States shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace, by any State, except such number only as shall be deemed necessary, by the United States in Congress assembled, for the defense of such State or its trade; nor shall any body of forces be kept up, by any State, in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the

danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

ART. VII.—When land forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII.—All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

ART. IX.—The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States, shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal, in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress, to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by

joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they can not agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing

and regulating post offices from one State to another throughout all the United States, and exacting such postage on the papers passing through the same, as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number can not be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treatise or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor

borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on any question, shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

ART. X.—The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States, in the Congress of the United States assembled, is requisite.

ART. XI.—Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same unless such admission be agreed to by nine States.

ART. XII.—All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII.—Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterward confirmed by the legislatures of every State."

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confedera-

tion and perpetual Union, Know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and Perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord 1778,¹ and in the third year of the Independence of America.

On the part and behalf of the State of New Hampshire—Josiah Bartlett, John Wentworth, Jun.

On the part and behalf of the State of Massachusetts Bay—John Hancock, Samuel Adams, Elbridge Gerry, Francis Dana, James Lovell, Samuel Holten.

On the part and behalf of the State of Rhode Island and Providence Plantations—William Ellery, Henry Marchant, John Collins.

On the part and behalf of the State of Connecticut—Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adam.

On the part and behalf of the State of New York—Jas. Duane, Fras Lewis, William Duer, Gouv'r Morris.

On the part and behalf of the State of New Jersey—Jno. Witherspoon, Nathl Scudder.

On the part and behalf of the State of Pennsylvania—Robt. Morris, Daniel Roberdeau, Jona Bayard Smith, William Clingan, Joseph Reed.

On the part and behalf of the State of Delaware—Tho. M'Kean, John Dickinson, Nicholas Van Dyke.

On the part and behalf of the State of Maryland—John Hanson, Daniel Carroll.

On the part and behalf of the State of Virginia—Richard Henry Lee, John Bannister, Thomas Adams, Jno. Harvie, Francis Lightfoot Lee.

On the part and behalf of the State of North Carolina—John Penn, Corns. Harnett, Jno. Williams.

On the part and behalf of the State of South Carolina—Henry Laurens, William Henry Drayton, Jno. Mathews, Richard Hutson, Thos. Heyward, Jun.

On the part and behalf of the State of Georgia—Jno. Walton, Edwd. Telfair, Edwd. Langworthy.

¹ Only eight States took action upon the Articles at this time. North Carolina, Georgia, New Jersey, Delaware, and Maryland ratified on the dates shown on p. i.

APPENDIX B

CONSTITUTION OF THE UNITED STATES OF AMERICA

[NOTE—The Constitution was adopted September 17, 1787, by the unanimous consent of the States present in the constitutional convention, and was ratified by the conventions of the several States, as follows: By Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790.

The first ten of the amendments were proposed by Congress, September 25, 1789, and were finally ratified by the constitutional number of States, December 15, 1791.

The other amendments were proposed by Congress at different times, and, having been adopted by the constitutional number of States, went into effect as follows: the eleventh amendment, January 8, 1798; the twelfth, September 25, 1804; the thirteenth, December 18, 1865; the fourteenth, July 28, 1868; the fifteenth, March 30, 1870.]

WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Preamble

ARTICLE I—Legislative Department

Section I. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

CONGRESS

Sec. II. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

REPRESENTATIVES:
when and
by whom
elected

Qualifica-
tions of
members

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Census
each ten
years, to
apportion
representa-
tives

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.¹ The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Vacancies

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

Speaker
Impeach-
ment

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

SENATE:
composi-
tion and
how chosen

Sec. III. 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years; and each Senator shall have one vote.

Not all
chosen at
same time

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Vacancies

Qualifica-
tions of
senator

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be president

¹ Amended by the Fourteenth Amendment.

of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Sec. IV. 1. The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sec. V. 1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sec. VI. 1. The Senator and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of

President
of the
senate

President
*pro
tempore*

Trial of
impeach-
ments

Punish-
ment of
impeached
officials

BOTH
HOUSES

Election
laws

When
Congress
meets

Election
returns.
Quorum

Rules in
each
house

The
"journal"

Adjourn-
ment

Compensa-
tion

Members
privileged
from arrest

their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

One federal office at a time

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Revenue bills

Sec. VII. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

President's veto power

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house

Congress may pass bill over president's veto

shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

EXPRESS POWERS OF CONGRESS

Taxing

Sec. VIII. 1. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

Borrowing

2. To borrow money on the credit of the United States;

Commerce

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States; Natural-ization and bank-ruptcy
 5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures; Coin money
 6. To provide for the punishment of counterfeiting the securities and current coin of the United States; Counterfeiting
 7. To establish post offices and post roads; Post offices
 8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries; Patents and copy-rights
 9. To constitute tribunals inferior to the Supreme Court; Establish courts
 10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; Piracy
 11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; War
 12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; Army
 13. To provide and maintain a navy; Navy
 14. To make rules for the government and regulation of the land and naval forces;
 15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions; Militia
 16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
 17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and Seat of government
 18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. IMPLIED POWERS
- Sec. IX. 1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person. PROHIBITIONS ON CONGRESS
2. The privileges of the writ of *habeas corpus* shall not be Importa-tion of slaves un-til 1808

- Habeas corpus* suspended, unless when in cases of rebellion or invasion the public safety may require it.
- Bill of attainder 3. No bill of attainder or *ex post facto* law shall be passed.
- Direct taxes according to population 4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.
- No tax on exports 5. No tax or duty shall be laid on articles exported from any State.
- No preference to state ports 6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.
- Lawful receipts and expenditures 7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.
- Titles not granted 8. No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.
- POWERS DENIED TO THE STATES Sec. X. 1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.
- States not to levy tariff 2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.
- Other powers expressly denied the States 3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II—Executive Department

- THE PRESIDENT: term of office Sec. I. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

How and
by whom
elected

[The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate, shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.]¹

3. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Election
day

4. No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Who may
be presi-
dent; qual-
ifications

5. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case

Impeach-
ment of
president;
who suc-
ceeds

¹ This paragraph superseded by the Twelfth Amendment.

of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

President's salary 6. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Oath of office 7. Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

President is commander in chief Sec. II. 1. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Reprieves and pardons Treaty-making power 2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

Vacancies 3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

President's messages to congress Sec. III. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sec. IV. The President, Vice President, and all civil officers

of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.	Removal from office
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ARTICLE III—Judiciary Department

Sec. I. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office.	Supreme and inferior courts Term of office and salary
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Sec. II. 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State; ¹ —between citizens of different States,—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.	Jurisdiction of U. S. courts
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2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.	Jurisdiction of supreme court
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3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.	Jury trial
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Sec. III. 1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.	Treason defined
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2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.	Punishment
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¹ See the Eleventh Amendment.

ARTICLE IV—The Nation and the States

Public acts
of the sev-
eral States

Sec. I. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

All citizens
equal

Sec. II. 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Removal
of crimi-
nals

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

Return of
runaway
slaves

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.¹

Admission
of new
States

Sec. III. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

Govern-
ment of
territories

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Republi-
can form
of gov-
ernment
guaranteed

Sec. IV. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V—Future Amendments

How
amend-
ments to
constitu-
tion are
proposed
and
adopted

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three

¹ See the Thirteenth Amendment.

fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI—Miscellaneous

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

U. S. assumes debts of confederation

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Supreme law of land

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States, and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

No religious test required

ARTICLE VII—Ratification

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Ratification

Done in Convention by the unanimous consent of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names,

GO: WASHINGTON—

Presidt and Deputy from Virginia

For other names signed to the Constitution, see pages 50–51.

AMENDMENTS

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several States pursuant to the fifth article of the original Constitution.

BILL OF RIGHTS
AMENDMENTS I–X

ARTICLE I

Religious
liberty and
free speech

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II

Carrying
arms

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III

Quartering
of troops

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV

Unreason-
able
searches
forbidden

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

Jury trial
for capital
offenses

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Life, lib-
erty and
property
safe-
guarded

ARTICLE VI

Criminal
prosecu-
tions:
speedy,
public,
jury trial

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be con-

fronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Trial by jury

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Bail and fines

ARTICLE IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Unexpressed rights of people

ARTICLE X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Powers reserved for the States

ARTICLE XI

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Judicial power limited

ARTICLE XII

The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government

Mode of election of President and Vice President provided for

Majority
of electoral
(not popu-
lar) vote
necessary

When the
House of
Represent-
atives
elects
President

of the United States, directed to the president of the Senate;—
The president of the Senate shall, in the presence of the Senate
and House of Representatives, open all the certificates and the
votes shall then be counted;—The person having the greatest
number of votes for President shall be the President, if such
number be a majority of the whole number of electors appointed;
and if no person have such majority, then from the persons
having the highest numbers not exceeding three on the list of
those voted for as President, the House of Representatives shall
choose immediately, by ballot, the President. But in choosing
the President, the votes shall be taken by States, the representa-
tion from each State having one vote; a quorum for this purpose
shall consist of a member or members from two thirds of the
States, and a majority of all the States shall be necessary to a
choice. And if the House of Representatives shall not choose
a President whenever the right of choice shall devolve upon
them, before the fourth day of March next following, then the
Vice President shall act as President, as in case of the death or
other constitutional disability of the President. The person
having the greatest number of votes as Vice President shall be
the Vice President, if such number be a majority of the whole
number of Electors appointed, and if no person have a majority,
then from the two highest numbers on the list, the Senate shall
choose the Vice President; a quorum for the purpose shall consist
of two thirds of the whole number of Senators, and a majority
of the whole number shall be necessary to a choice. But no
person constitutionally ineligible to the office of President shall
be eligible to that of Vice President of the United States.

ARTICLE XIII

Slavery
abolished

Negro a
free man

Sec. I. Neither slavery nor involuntary servitude, except as
a punishment for crime whereof the party shall have been duly
convicted, shall exist within the United States, or any place
subject to their jurisdiction.

Sec. II. Congress shall have power to enforce this article by
appropriate legislation.

ARTICLE XIV

Who are
citizens?

Negro a
citizen

State
powers
restricted

Sec. I. All persons born or naturalized in the United States,
and subject to the jurisdiction thereof, are citizens of the United
States and of the State wherein they reside. No State shall
make or enforce any law which shall abridge the privileges or
immunities of citizens of the United States; nor shall any State
deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. II. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Basis of representation in congress: all male citizens

Sec. III. No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each house, remove such disability.

Political disability

Sec. IV. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

What debts are valid

Sec. V. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV

Sec. I. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Negro a voter

Sec. II. The Congress shall have power to enforce this article by appropriate legislation.

APPENDIX C

ENABLING ACT

[Approved February 22, 1889.]

AN ACT to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the inhabitants of all that part of the area of the United States now constituting the territories of Dakota, Montana and Washington as at present described, may become the states of North Dakota, South Dakota, Montana and Washington, respectively, as hereinafter provided.

Sec. 2. The area comprising the territory of Dakota shall for the purposes of this act be divided on the line of the 7th standard parallel produced due west to the western boundary of said territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the City of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time, assemble in convention at the city of Sioux Falls.

Sec. 3. That all persons who are qualified by the laws of said territories to vote for representatives to the legislative assemblies thereof are hereby authorized to vote for and choose delegates to form conventions in said proposed states; and the qualifications for delegates to such conventions shall be such as by the laws of said territories respectively, persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed states, in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons

for delegates to such conventions; that said apportionments shall be made by the governor, the chief justice and the secretary of said territories; and the governors of said territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed states, to be held on the Tuesday after the second Monday in May, 1889; which proclamation shall be issued on the 15th day of April, 1889; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such conventions issued in the same manner as is prescribed by the laws of the said territories regulating elections therein for delegates to congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively shall be 75; and all persons resident in said proposed states who are qualified voters of said territories as herein provided, shall be entitled to vote upon the election of delegates; and under such rules and regulations as said conventions may prescribe, not in conflict with this act upon the ratification or rejection of the constitutions.

Sec. 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the fourth day of July, 1889, and after organization shall declare, on behalf of the people of said proposed states, that they adopt the constitution of the United States; whereupon the said conventions shall be, and are hereby authorized to form constitutions and state governments for said proposed states respectively. The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the constitution of the United States and the principles of the declaration of independence. And said convention shall provide, by ordinances irrevocable without the consent of the United States and the people of said states:

First. That the perfect toleration of religious sentiment shall be secured, and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter

be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such act of congress may prescribe.

Third. That the debts and liabilities of said territories shall be assumed and paid by said states respectively.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control.

Sec. 5. That the convention which shall assemble at Bismarek shall form a constitution and state government for a state to be known as North Dakota and the convention which shall assemble at Sioux Falls shall form a constitution and state government for a state to be known as South Dakota; provided, that at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot the words "For the Sioux Falls Constitution" or the words "Against the Sioux Falls Constitution" and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section 3 of this act; and if a majority of all votes cast on this question shall be "For the Sioux Falls Constitution" it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection at the election hereinafter provided for in this act, the constitution framed at Sioux Falls and adopted Nov. 3, 1885, and also the articles and propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed state, to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of the articles separately submitted, the state of South Dakota shall be admitted as a state in the union under said constitution as hereinafter provided; but the archives, records and books of the territory of Dakota shall remain at Bismarek, the capital of North Dakota, until an agreement in reference thereto is reached by said states. But if at the election for delegates to the constitutional convention in South Dakota a majority of all the votes cast at that election shall be "Against the Sioux Falls Constitu-

tion," then, and in that event it shall be the duty of the convention which will assemble at the city of Sioux Falls on the fourth day of July, 1889, to proceed to form a constitution and state government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

Sec. 6. It shall be the duty of the constitutional conventions of North Dakota and South Dakota to appoint a joint commission to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said territory, and agree upon an equitable division of all property belonging to the territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the territory which shall be assumed and paid by each of the proposed states of North Dakota and South Dakota, and the agreement reached respecting the territorial debts and liabilities shall be incorporated in the respective constitutions, and each of said states shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such states respectively.

Sec. 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the territory so rejecting its proposed constitution shall continue under the territorial government of the present territory of Dakota, but shall, after the state adopting its constitution is admitted into the union be called by the name of the territory of North Dakota or South Dakota, as the case may be; provided, that if either of the proposed states provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the governor of the territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed state for ratification or rejection at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

Sec. 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of 1885, after having amended the same as provided

in section 5 of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, 1889; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection, at an election to be held in said proposed state on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana and Washington shall provide in like manner for submitting the constitutions formed by them to the people of said proposed states, respectively, for ratification or rejection at elections to be held in said proposed states on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said territories, who, with the governor and chief justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the president of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of the said constitution, articles, propositions and ordinances. And if the constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the president of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted constitutions and formed state governments as herein provided, shall be deemed admitted by congress into the union under and by virtue of this act, on an equal footing with the original states from and after the date of said proclamation.

Sec. 9. That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the house of representatives of the United States, except South Dakota, which shall be entitled to two; and the representatives to the fifty-first congress, together with the governors and other officers provided for in said constitutions may be elected on the same day of the election for the ratification or rejection of the constitutions, and until said state officers are elected and qualified under the provisions of each constitution and the states, respectively, are admitted into the union, the territorial officers shall continue to discharge the duties of their respective officers in each of said territories.

Sec. 10. That upon the admission of each of said states into the union sections numbered 16 and 36 in every township of said proposed states, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of con-

gress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; provided, that the 16th and 36th sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character, be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain.

Sec. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than \$10 per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any person or company; and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

Sec. 12. That upon the admission of each of said states into the union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said states, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby, granted to said states for the purpose of erecting public buildings at the capital of said states for legislative, executive and judicial purposes.

Sec. 13. That 5 per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said states into the union, after deducting all the expenses incident to the same, shall be paid to the said states, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said states respectively.

Sec. 14. That the lands granted to the territories of Dakota and Montana by the act of Feb. 18, 1881, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the states of South Dakota, North Dakota and Montana, respectively, if such states are admitted into the union as provided in this act, to the extent of the full quantity of seventy-two sections to each of said states, and any portion of said lands that may not have been selected by either of said territories of Dakota or Montana may be selected by the respective states aforesaid;

but said act of February 18, 1881, shall be so amended as to provide that none of said lands shall be sold for less than \$10 per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said states severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July 17, 1854, to be reserved for university purposes in the territory of Washington, as, together with the lands confirmed to the vendees of the territory by the act of March 14, 1864, will make the full quantity of seventy-two entire sections, are hereby granted in like manner to the state of Washington for the purposes of a university in said state. None of the lands granted in this section shall be sold at less than \$10 per acre; but said lands may be leased in the same manner as provided in section 11 of this act. The schools, colleges and universities provided for in this act shall forever remain under exclusive control of the said states respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university. The section of land granted by the act of June 16, 1880, to the territory of Dakota, for an asylum for the insane shall, upon the admission of said state of South Dakota into the union, become the property of said state.

Sec. 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the territory of Dakota," approved March 2, 1881, together with the buildings thereon, be, and the same is hereby granted, together with any unexpended balances of the money appropriated therefor by said act, to said state of South Dakota, for the purposes therein designated; and the States of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March 2, 1881, for the the territory of Dakota. The penitentiary at Deer Lodge City, Mont., and all land connected therewith and set apart and reserved therefor, are hereby granted to the state of Montana.

Sec. 16. That 90,000 acres of land, to be selected and located as provided in section 10 of this act, are hereby granted to each of said states, except to the state of South Dakota, to which 120,000 acres are granted, for the use and support of agricultural colleges in said states, as provided in the acts of congress making donations of lands for such purposes.

Sec. 17. That in lieu of the grant of land for purposes of internal improvement made to new states by the eighth section of the act of Sept. 4, 1841, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of Sept. 28, 1850, and sections 2479 of the revised statutes, making a grant of swamp and overflowed lands to

certain states, which grant it is hereby declared is not extended to the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to wit:

To the state of South Dakota: For the school of mines, 40,000 acres; for the reform school 40,000 acres; for the deaf and dumb asylum, 40,000 acres; for the agricultural college, 40,000 acres; for the university, 40,000 acres; for the state normal schools, 80,000 acres; for public buildings at the capital of said state, 50,000 acres; for such other educational and charitable purposes as the legislature of said state may determine, 170,000 acres; in all 500,000 acres.

To the state of North Dakota a like quantity of land as is in this section granted to the state of South Dakota, and to be for like purposes and in like proportion as far as practicable.

To the state of Montana: For the establishment and maintenance of a school of mines, 100,000 acres; for state normal schools, 100,000 acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, 50,000 acres; for the establishment of a state reform school, 50,000 acres; for the establishment of a deaf and dumb asylum, 50,000 acres; for public buildings at the capital of the state, in addition to the grants hereinbefore made for that purpose, 150,000 acres.

To the state of Washington: For the establishment and maintenance of a scientific school, 100,000 acres; for the state normal schools, 100,000 acres; for public buildings at the state capital in addition to the grant hereinbefore made for that purpose, 100,000 acres: for state, charitable, educational, penal and reformatory institutions, 200,000 acres.

That the states provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide.

Sec. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections 16 and 36 or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the department of the interior to be mineral lands said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said states, in lieu thereof, for the use and benefits of the common schools of said states.

Sec. 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior, from the surveyed, unreserved and unappropriated public lands of the United States within the limits of the respective states entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said states the number of acres in each heretofore donated by congress to said territories for similar objects.

Sec. 20. That the sum of \$20,000, or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated, to each of said territories for defraying the expenses of said conventions, except to Dakota, for which the sum of \$40,000 is so appropriated, \$20,000 each to South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the treasury of the United States.

Sec. 21. That each of said states, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the states, respectively; and the circuit and district courts therefor shall be held at the capital of such state for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the Eighth judicial circuit, except Washington and Montana, which shall be attached to the Ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney, and one United States marshal. The judge of each of said districts shall receive a yearly salary of \$3,500, payable in four equal installments, on the first days of January, April, July and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said state. The regular terms of said courts shall be held in each district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney and clerks of the circuit and district courts of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the state of Nebraska.

Sec. 22. In all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States upon any record from the supreme court of either of the territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts, may be heard and determined by said supreme court of the United States. And the mandate of exe-

cution or of further proceedings shall be directed by the supreme court of the United States to the circuit or district court hereby established within the state succeeding the territory from which such record is or may be pending, or to the supreme court of such state, as the nature of the case may require; provided, that the mandate of execution or of further proceedings shall, in cases arising in the territory of Dakota, be directed by the supreme court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the state of South Dakota; or to the circuit or district court of the district of North Dakota, or to the supreme court of the state of North Dakota, or to the supreme court of the territory of North Dakota, as the nature of the case may require. And each of the circuit, district and state courts herein named shall, respectively, be the successor of the supreme court of the territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the territories mentioned in this act, in any case arising within the limits of any of the proposed states prior to admission, the parties of such judgment shall have the same right to prosecute appeals and writs of error to the supreme court of the United States as they shall have had by law prior to the admission of said state into the union.

Sec. 23. That in respect to all cases, proceedings and matters now pending in the supreme or district courts of either of the territories mentioned in this act at the time of the admission into the union of either of the states mentioned in this act, and arising within the limits of any such state, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said territory; and in respect to all other cases, proceedings and matters pending in the supreme or district courts of any of the territories mentioned in this act at the time of the admission of such territory into the union, arising within the limits of said proposed state, the courts established by such state shall, respectively, be the successors of said supreme and district territorial courts; and all the files, records, indictments and proceedings relating to any such cases shall be transferred to such circuit, district and state courts respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the states mentioned in this act shall be pending in any territorial court in any of the territories mentioned in this act, shall abate by the admission of any such state into the union, but the same shall be transferred and proceeded with in the proper United States circuit, district or

state court as the case may be; provided, however, that in all civil actions, causes and proceedings in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States except upon written request of one of the parties to such action or proceeding filed in the proper court; and in the absence of such request, such cases shall be proceeded with in the proper state courts.

Sec. 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full state governments, including members of the legislatures and representatives in the fifty-first congress; but said state government shall remain in abeyance until the states shall be admitted into the union, respectively, as provided in this act. In case the constitution of any of said proposed states shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize, and elect two senators of the United States, and the governor and secretary of state of such proposed state shall certify the election of the senators and representatives in the manner required by law; and when such state is admitted into the union the senators and representatives shall be entitled to be admitted to seats in congress, and to all the rights and privileges of senators and representatives of other states in the congress of the United States; and the officers of the state governments formed in pursuance of said constitutions, as provided by the constitutional conventions, shall proceed to exercise all the functions of such state officers; and all laws in force made by said territories at the time of their admission into the union shall be in force in said states, except as modified or changed by this act or by the constitutions of the states, respectively.

Sec. 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said territories or by congress, are hereby repealed.

APPENDIX D

CONSTITUTION OF THE STATE OF NORTH DAKOTA

[Adopted Oct. 1, 1889; yeas, 27,441; nays, 8,107.]

We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution.	Preamble
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ARTICLE I—Declaration of Rights

Section 1. All men are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property and reputation; and pursuing and obtaining safety and happiness.	Bill of rights Inalienable rights
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Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.	Aim of government
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Sec. 3. The state of North Dakota is an inseparable part of the American union and the Constitution of the United States is the supreme law of the land.	Supreme law
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Sec. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.	Religious liberty
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Sec. 5. The privilege of the writ of <i>habeas corpus</i> shall not be suspended unless, when in case of rebellion or invasion, the public safety may require.	<i>Habeas corpus</i>
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Sec. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident or the

No excessive bail or fines

presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

Trial by jury

Sec. 7. The right of trial by jury shall be secured to all, and remain inviolate; but a jury in civil cases, in courts not of record, may consist of less than twelve men, as may be prescribed by law.

Further rights of accused

Sec. 8. Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system.

Freedom of speech

Sec. 9. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court, as in other cases.

Public meetings

Sec. 10. The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

Operation of laws

Sec. 11. All laws of a general nature shall have a uniform operation.

No standing army

Sec. 12. The military shall be subordinate to the civil power. No standing army shall be maintained by this State in time of peace, and no soldiers shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

Rights of accused in criminal prosecutions

Sec. 13. In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

Private property cannot be confiscated

Sec. 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner and no right of way shall be

appropriated to the use of any corporation, other than municipal, until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived.

Sec. 15. No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in case of tort; or where there is strong presumption of fraud.

No imprisonment for debt

Sec. 16. No bill of attainder, *ex post facto* law, or law impairing the obligations of contracts shall ever be passed.

Ex post facto laws forbidden
Slavery forbidden

Sec. 17. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

Sec. 18. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Rights against searches

Sec. 19. Treason against the State shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

Treason defined

Sec. 20. No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

Granting of special privileges

Sec. 21. The provisions of this Constitution are mandatory and prohibitory unless, by express words, they are declared to be otherwise.

Constitution in force

Sec. 22. All courts shall be open and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the State in such manner, in such courts and in such cases as the legislative assembly may, by law, direct.

Justice administered

Sec. 23. Every citizen of this State shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

Freedom of employment

Sec. 24. To guard against transgressions of the high powers

which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

ARTICLE II—Legislative Department

- Two legis-
lative
bodies Sec. 25. The legislative power shall be vested in a senate and house of representatives.
- Number of
senators Sec. 26. The senate shall be composed of not less than thirty nor more than fifty members.
- Term of
office Sec. 27. Senators shall be elected for the term of four years, except as hereinafter provided.
- Qualifica-
tions of
senator Sec. 28. No person shall be a senator who is not a qualified elector in the district in which he may be chosen, and who shall not have attained the age of twenty-five years, and have been a resident of the state or territory for two years next preceding his election.
- Apportion-
ment of
senators Sec. 29. The legislative assembly shall fix the number of senators, and divide the state into as many senatorial districts as there are senators, which districts, as nearly as may be, shall be equal to each other in the number of inhabitants entitled to representation. Each district shall be entitled to one senator and no more, and shall be composed of compact and contiguous territory; and no portion of any county shall be attached to any other county, or part thereof, so as to form a district. The districts as thus ascertained and determined shall continue until changed by law.
- One half of
senators
elected
biennially Sec. 30. The senatorial districts shall be numbered consecutively from one upwards, according to the number of districts prescribed, and the senators shall be divided into two classes. Those elected in the districts designated by even numbers shall constitute one class, and those elected in districts designated by odd numbers shall constitute the other class. The senators in one class elected in the year 1890 shall hold their office for two years, those of the other class shall hold their office four years, and the determination of the two classes shall be by lot, so that one half of the senators, as nearly as practicable, may be elected biennially.
- President
of senate Sec. 31. The senate at the beginning and close of each regular session, and at each other times as may be necessary, shall elect one of its members president pro tempore, who may take the place of the lieutenant governor under rules prescribed by law.
- Number of
members
in house of
represent-
atives Sec. 32. The house of representatives shall be composed of not less than sixty nor more than one hundred and forty members.
- Term of
office Sec. 33. Representatives shall be elected for the term of two years.

- Sec. 34. No person shall be a representative who is not a qualified elector in the district from which he may be chosen, and who shall not have attained the age of twenty-one years, and have been a resident of the state or territory for two years next preceding his election. Qualifications of members
- Sec. 35. The members of the house of representatives shall be apportioned to and elected at large from each senatorial district. The legislative assembly shall, in the year 1895, and every tenth year, cause an enumeration to be made of all the inhabitants of this state, and shall at its first regular session after each such enumeration, and also after each federal census, proceed to fix by law the number of senators which shall constitute the senate of North Dakota, and the number of representatives which shall constitute the house of representatives of North Dakota, within the limits prescribed by this constitution, and at the same session shall proceed to reapportion the state into senatorial districts, as prescribed by this constitution, and to fix the number of members of the house of representatives to be elected from the several senatorial districts; provided, that the legislative assembly may, at any regular session, redistrict the state into senatorial districts and apportion the senators and representatives respectively. Apportionment of representatives
- Sec. 36. The house of representatives shall elect one of its members as speaker. Census required
- Sec. 37. No judge or clerk of any court, secretary of state, attorney general, register of deeds, sheriff or person holding any office of profit under this state, except in the militia, or the office of attorney at law, notary public or justice of the peace, and no person holding any office of profit or honor under any foreign government, or under the government of the United States, except postmasters whose annual compensation does not exceed the sum of \$300, shall hold any office in either branch of the legislative assembly or become a member thereof. Election of speaker
- Sec. 38. No member of the legislative assembly expelled for corruption, and no person convicted of bribery, perjury or other infamous crime, shall be eligible to the legislative assembly, or to any office in either branch thereof. Public officials not eligible
- Sec. 39. No member of the legislative assembly shall, during the term for which he was elected, be appointed or elected to any civil office in this state, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected; nor shall any member receive any civil appointment from the governor, or governor and senate, during the term for which he shall have been elected. Restriction of eligibility
- Sec. 40. If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence Increase of salaries and promotions
- Sec. 41. If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence Bribery

in favor of, or against, any measure or proposition pending or proposed to be introduced into the legislative assembly, in consideration, or upon conditions, that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such legislative assembly, or offer, promise or assent to do upon condition that any other member will give, promise or assent to give his vote or influence in favor of or against any other such measure or proposition pending or proposed to be introduced into such legislative assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery. And any person, member of the legislative assembly or person elected thereto, who shall be guilty of either such offenses, shall be expelled, and shall not thereafter be eligible to the legislative assembly, and on the conviction thereof, in the civil courts, shall be liable to such further penalty as may be prescribed by law.

Representatives expelled for bribery

When term begins

Sec. 41. The term of service of the members of the legislative assembly shall begin on the first Tuesday in January, next after their election.

Privileged from arrest

Sec. 42. The members of the legislative assembly shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to or returning from the same. For words used in any speech or debate in either house, they shall not be questioned in any other place.

Restriction on voting in house

Sec. 43. Any member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon without the consent of the house.

Vacancies filled

Sec. 44. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislative assembly.

Compensation of members

Sec. 45. Each member of the legislative assembly shall receive as a compensation for his services for each session, five dollars per day, and ten cents for every mile of necessary travel in going to and returning from the place of the meeting of the legislative assembly on the most usual route.

Quorum

Sec. 46. A majority of the members of each house shall

constitute a quorum, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such a manner and under such a penalty as may be prescribed by law.

Sec. 47. Each house shall be the judge of the election returns and the qualifications of its own members.

Election
returns

Sec. 48. Each house shall have the power to determine the rules of proceeding, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribes or private solicitation, and with the concurrence of two thirds, to expel a member; and shall have all other powers necessary and usual in the legislative assembly of a free state. But no imprisonment by either house shall continue beyond thirty days. Punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

Rules of
the house

Sec. 49. Each house shall keep a journal of its proceedings, and the yeas and nays on any question shall be taken and entered on the journal at the request of one sixth of those present.

Journal of
proceed-
ings

Sec. 50. The sessions of each house and of the committee of the whole shall be open unless the business is such as ought to be kept secret.

Sessions
public

Sec. 51. Neither house shall, without the consent of the other, adjourn for more than three days nor to any other place than that in which the two houses shall be sitting, except in case of epidemic, pestilence or other great danger.

Adjourn-
ment

Sec. 52. The senate and house of representatives jointly shall be designated as the legislative assembly of the State of North Dakota.

Legisla-
tive as-
sembly

Sec. 53. The legislative assembly shall meet at the seat of government at 12 o'clock noon on the first Tuesday after the first Monday in January, in the year next following the election of the members thereof.

First
meeting of
assembly

Sec. 54. In all elections to be made by the legislative assembly or either house thereof, the members shall vote viva voce, and their votes shall be entered in the journal.

Viva voce
vote

Sec. 55. The sessions of the legislative assembly shall be biennial, except as otherwise provided in this Constitution.

Biennial
sessions

Sec. 56. No regular session of the legislative assembly shall exceed sixty days, except in case of impeachment, but the first session of the legislative assembly may continue for a period of one hundred and twenty days.

Duration
of session

Sec. 57. Any bill may originate in either house of the legislative assembly, and a bill passed by one house may be amended by the other.

Origin and
amend-
ment of
bills

Sec. 58. No law shall be passed, except by a bill adopted by

- Bill must pass both houses both houses, and no bill shall be altered and amended on its passage through either house as to change its original purpose.
- Enacting clause Sec. 59. The enacting clause of every law shall be as follows: "Be it enacted by the Legislative Assembly of the State of North Dakota."
- Restriction on revenue bills Sec. 60. No bill for the appropriation of money, except for the expenses of the government, shall be introduced after the fortieth day of the session, except by unanimous consent of the house in which it is sought to be introduced.
- Nature of bill Sec. 61. No bill shall embrace more than one subject, which shall be expressed in its title, but a bill which violates this provision shall be invalidated thereby only as to so much thereof as shall not be so expressed.
- Nature of revenue bills Sec. 62. The general appropriation bill shall embrace nothing but appropriations for the expenses of the executive, legislative and judicial departments of the State, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.
- Readings of bill Sec. 63. Every bill shall be read three several times, but the first and second readings, and those only, may be upon the same day; and the second reading may be by title of the bill unless a reading at length be demanded. The first and third readings shall be at length. No legislative day shall be shorter than the natural day.
- Amendments Sec. 64. No bill shall be revised or amended, nor the provisions thereof extended or incorporated in any other bill by reference to its title only, but so much thereof as is revised, amended or extended or so incorporated shall be re-enacted and published at length.
- Majority vote necessary Sec. 65. No bill shall become a law except by a vote of a majority of all the members-elect in each house, nor unless, on its final passage, the vote be taken by yeas and nays, and the names of those voting be entered on the journal.
- Presiding officer signs bills Sec. 66. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislative assembly; immediately before such signing their title shall be publicly read and the fact of signing shall be at once entered on the journal.
- New law effective July 1 Sec. 67. No act of the legislative assembly shall take effect until July 1, after the close of the session, unless in case of emergency (which shall be expressed in the preamble or body of the act) the legislative assembly shall, by a vote of two thirds of all the members present in each house, otherwise direct.
- Sec. 68. The legislative assembly shall pass all laws necessary to carry into effect the provisions of this Constitution.

Sec. 69. The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Special
and local
laws
which leg-
islative
assembly
cannot
pass

1. For granting divorces.
2. Laying out, opening, altering or working roads or highways, vacating roads, town plats, streets, alleys or public grounds.
3. Locating or changing county seats.
4. Regulating county or township affairs.
5. Regulating the practice of courts of justice.
6. Regulating the jurisdiction and duties of justices of the peace, police magistrates or constables.
7. Changing the rules of evidence in any trial or inquiry.
8. Providing for change of venue in civil or criminal cases.
9. Declaring any person of age.
10. For limitation of civil actions, or giving effect to informal or invalid deeds.
11. Summoning or impaneling grand or petit juries.
12. Providing for the management of common schools.
13. Regulating the rate of interest on money.
14. The opening or conducting of any election or designating the place of voting.
15. The sale or mortgage of real estate belonging to minors or others under disability.
16. Chartering or licensing ferries, toll bridges or toll roads.
17. Remitting fines, penalties or forfeitures.
18. Creating, increasing or decreasing fees, percentages or allowances of public officers.
19. Changing the law of descent.
20. Granting to any corporation, association or individual the right to lay down railroads tracks or any special or exclusive privilege, immunity or franchise whatever.
21. For the punishment of crimes.
22. Changing the names of persons or places.
23. For the assessment or collection of taxes.
24. Affecting estates of deceased persons, minors or others under legal disabilities.
25. Extending the time for the collection of taxes.
26. Refunding money into the state treasury.
27. Relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this State or to any municipal corporation therein.
28. Legalizing except as against the State, the unauthorized or invalid act of any officer.
29. Exempting property from taxation.
30. Restoring to citizenship persons convicted of infamous crimes.
31. Authorizing the creation, extension or impairing of liens.

32. Creating offices, or prescribing the powers or duties of officers in counties, cities, township, election or school districts, or authorizing the adoption or legitimation of children.

33. Incorporation of cities, towns or villages, or changing or amending the charter of any town, city or village.

34. Providing for the election of members of the board of supervisors in townships, incorporated towns or cities.

35. The protection of game or fish.

Repeal of
special acts
Laws must
be general

Sec. 70. In all other cases where a general law can be made applicable, no special law shall be enacted; nor shall the legislative assembly indirectly enact such special or local law by the partial repeal of a general law, but laws repealing local or special acts may be passed.

ARTICLE III—Executive Department

Governor's
term two
years

Sec. 71. The executive power shall be vested in a governor, who shall reside at the seat of government and shall hold his office for the term of two years and until his successor is elected and duly qualified.

Lieutenant
governor:
term of
office

Sec. 72. A lieutenant governor shall be elected at the same time and for the same term as the governor. In case of the death impeachment, resignation, failure to qualify, absence from the State, removal from office, or the disability of the governor, the powers and duties of the office, for the residue of the term, or until he shall be acquitted or the disability removed, shall devolve upon the lieutenant governor.

Eligibility
and quali-
fications
for gov-
ernor and
lieutenant
governor

Sec. 73. No person shall be eligible to the office of governor or lieutenant governor unless he be a citizen of the United States, and a qualified elector of the State, who shall have attained the age of thirty years, and who shall have resided five years next preceding the election within the State or territory, nor shall he be eligible to any other office during the term for which he shall have been elected.

Elected
by the
people

Sec. 74. The governor and lieutenant governor shall be elected by the qualified electors of the State at the time and places of choosing members of the legislative assembly. The persons having the highest number of votes for governor and lieutenant governor respectively shall be declared elected, but if two or more shall have an equal and highest number of votes for governor or lieutenant governor, the two houses of the legislative assembly at its next regular session shall forthwith, by joint ballot, choose one of such persons for said office. The returns of the election for governor and lieutenant governor shall be made in such manner as shall be prescribed by law.

If vote is
tie, assem-
bly elects

Sec. 75. The governor shall be commander-in-chief of the

military and naval forces of the State, except when they shall be called into the service of the United States, and may call out the same to execute the laws, suppress insurrection and repel invasion. He shall have power to convene the legislative assembly on extraordinary occasions. He shall at the commencement of each session communicate to the legislative assembly by message, information of the condition of the State, and recommend such measures as he shall deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislative assembly and shall take care that the laws be faithfully executed.

Powers of governor
Head of militia

Message of governor

Sec. 76. The governor shall have power to remit fines and forfeitures, to grant reprieve, commutations and pardons after conviction, for all offenses except treason and cases of impeachment; but the legislative assembly may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Upon conviction for treason he shall have power to suspend the execution of sentence until the case shall be reported to the legislative assembly at its next regular session, when the legislative assembly shall either pardon or commute the sentence, direct the execution of the sentence or grant further reprieve. He shall communicate to the legislative assembly at each regular session each case of remission of fine, reprieve, commutation or pardon granted by him, stating the name of the convict, the crime for which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same.

Pardoning power

Note.—This section amended by Article 3, Amendments to the Constitution.

Sec. 77. The lieutenant governor shall be president of the senate, but shall have no vote unless they be equally divided. If, during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign or die, or from mental or physical disease, or otherwise become incapable of performing the duties of his office, the secretary of State shall act as governor until the vacancy shall be filled or the disability removed.

Powers of lieutenant governor: president of senate

Sec. 78. When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

Vacancies filled

Sec. 79. Every bill which shall have passed the legislative assembly shall, before it becomes a law, be presented to the governor. If he approves, he shall sign, but if not, he shall return with his objections, to the house in which it originated, which shall enter the objections at large upon the journal, and proceed

Veto power of governor

to reconsider it. If, after such reconsideration, two thirds of the members-elect shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if it be approved by two thirds of the members-elect, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law unless the legislative assembly, by its adjournment, prevent its return, in which case it shall be a law unless he shall file the same with his objections in the office of the secretary of state within fifteen days after such adjournment.

No pocket
veto

Portions of
act may be
vetoed

Sec. 80. The governor shall have power to disapprove of any item or items or part or parts of any bill making appropriations of money or property, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items and part or parts disapproved shall be void, unless enacted in the following manner: If the legislative assembly be in session he shall transmit to the house in which the bill originated a copy of the item or items, or part or parts thereof disapproved, together with his objections thereto, and the items or parts objected to shall be reconsidered, and each item or part shall then take the same course as is prescribed for the passage of bills over the executive veto.

Governor
may not
bribe, nor
use unduly
his official
influence
over legis-
lation

Sec. 81. Any governor of this State who asks, receives or agrees to receive, any bribe upon any understanding that his official opinion, judgment or action shall be influenced thereby, or who gives or offers, or promises his official influence in consideration that any member of the legislative assembly shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity, or who menaces any member by the threatened use of his veto power, or who offers or promises any member that he, the said governor, will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of said legislative assembly, or who threatens any member that he, the said governor, will remove any person or persons from office or position, with intent in any manner to influence the action of said member, shall be punished in the manner now, or that may hereafter be provided by law, and upon conviction thereof shall forfeit all right to hold or exercise any office of trust or honor in this State.

Sec. 82. There shall be chosen by the qualified electors of the State, at the times and places of choosing members of the legislative assembly, a secretary of State, auditor, treasurer, superintendent of public instruction, commissioner of insurance, three commissioners of railroads, an attorney general and one commissioner of agriculture and labor, who shall have attained the age of twenty-five years, shall be citizens of the United States, and shall have the qualifications of State electors. They shall severally hold their offices at the seat of government, for the term of two years and until their successors are elected and fully qualified, but no person shall be eligible to the office of treasurer for more than two consecutive terms.

Other
elective
executive
officers

Sec. 83. The powers and duties of the secretary of State, auditor, treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads, attorney general and commissioner of agriculture and labor shall be as prescribed by law.

Powers
and duties
of sec. of
state, etc.

Sec. 84. Until otherwise provided by law, the governor shall receive an annual salary of three thousand dollars; the lieutenant governor shall receive an annual salary of one thousand dollars; the secretary of State, auditor, treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads, and attorney general shall each receive an annual salary of two thousand dollars; the salary of the commissioner of agriculture and labor shall be as prescribed by law, but the salaries of any of the said officers shall not be increased or diminished during the period for which they shall have been elected, and all fees and profits arising from any of the said offices shall be covered into the State treasury.

Salary of
governor
and other
executives

ARTICLE IV—Judicial Department

Sec. 85. The judicial power of the State of North Dakota shall be vested in a supreme court, district courts, county courts, justices of the peace, and in such other courts as may be created by law for cities, incorporated towns and villages.

Judicial
powers

Sec. 86. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State and shall have a general superintending control over all inferior courts under such regulations and limitations as may be prescribed by law.

Supreme
court

Sec. 87. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction and such other original and remedial writs as may be necessary to the proper exercise of its jurisdiction, and shall have authority to hear and determine the same; provided, however, that no jury trial shall

Jurisdic-
tion of su-
preme
court

be allowed in said supreme court, but in proper cases questions of fact may be sent by said court to a district court for trial.

Where and
when su-
preme
court
meets

Sec. 88. Until otherwise provided by law three terms of the supreme court shall be held each year, one at the seat of government, one at Fargo in the county of Cass, and one at Grand Forks, in the county of Grand Forks.

Note.—Under the provisions of an act of the legislature of 1909, two general terms of the supreme court shall be held at the seat of government, to be known as the April and October terms, and only special terms will be held at cities other than Bismarck upon twenty days previous published notice.

Five judges
of supreme
court

Sec. 89. The supreme court shall consist of three judges, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said judges may adjourn the court from day to day or to a day certain.

Note.—Five judges provided for by amendment adopted 1908.

Judges
elected by
people

Sec. 90. The judges of the supreme court shall be elected by the qualified electors of the State at large, and except as may be otherwise provided herein for the first election for judges under this constitution, said judges shall be elected at general elections.

Term of
office

Sec. 91. The term of office of the judges of the supreme court except as in this article otherwise provided, shall be six years, and they shall hold their offices until their successors are duly qualified.

First elec-
tion and
terms

Sec. 92. The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot so that one shall hold his office for the term of three years, one for the term of five years, and one for the term of seven years from the first Monday in December, A. D. 1889. The lots shall be drawn by the judges, who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the secretary of the territory and filed in his office, unless the secretary of State of North Dakota shall have entered upon the duties of his office, in which event said certification shall be filed therein. The judge having the shortest term to serve, not holding his office by election or appointment to fill a vacancy, shall be chief justice and shall preside at all terms of the supreme court, and in case of his absence the judge having in like manner the next shortest term to serve shall preside in his stead.

Chief
justice

Minor
court
officers

Sec. 93. There shall be a clerk and also a reporter of the supreme court, who shall be appointed by the judges thereof, and who shall hold their offices during the pleasure of said judge, and whose duties and emoluments shall be prescribed by law and by rules of the supreme court not inconsistent with law. The

legislative assembly shall make provision for the publication and distribution of the decisions of the supreme court and for the sale of the published volumes thereof.

Court decisions published

Sec. 94. No person shall be eligible to the office of judge of the supreme court unless he be learned in law, be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this State or the territory of Dakota three years next preceding his election.

Eligibility of judges

Sec. 95. Whenever the population of the State of North Dakota shall equal 600,000 the legislative assembly shall have the power to increase the number of the judges of the supreme court to five, in which event a majority of said court, as thus increased, shall constitute a quorum.

Judges may be increased

Note.—See Amendments, Article X.

Sec. 96. No duties shall be imposed by law upon the supreme court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided.

Duties

Sec. 97. The style of all process shall be "The State of North Dakota." All prosecutions shall be carried on in the name and by the authority of the State of North Dakota, and conclude "against the peace and dignity of the State of North Dakota."

Sec. 98. Any vacancy happening by death, resignation or otherwise in the office of judge of the supreme court shall be filled by appointment, by the governor, which appointment shall continue until the first general election thereafter, when said vacancy shall be filled by election.

Vacancies

Sec. 99. The judges of the supreme and district courts shall receive such compensation for their services as may be prescribed by law, which compensation shall not be increased or diminished during the term for which a judge shall have been elected.

Compensation

Sec. 100. In case a judge of the supreme court shall be in any way interested in a cause brought before said court the remaining judges, of said court shall call one of the district judges to sit with them in the hearing of said cause.

Judges disqualified

Sec. 101. When a judgment or decree is reversed or confirmed by the supreme court every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefor shall be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme court, and preserved with a record of the case. Any judge dissenting therefrom may give the reasons for his dissent in writing over his signature.

Decisions in writing

Sec. 102. It shall be the duty of the court to prepare a syllabus of the points adjudicated in each case, which shall be con-

Adjudicated points

curred in by a majority of the judges thereof, and it shall be prefixed to the published reports of the case.

Jurisdiction of district courts Sec. 103. The district courts shall have original jurisdiction, except as otherwise provided in this constitution, of all causes both at law and equity, and such appellate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of habeas corpus, quo warranto, certiorari, injunction and other original and remedial writs, with authority to hear and determine the same.

Judicial districts Sec. 104. The State shall be divided into six judicial districts, in each of which there shall be elected at general elections by the electors thereof one judge of the district court therein whose term of office shall be four years from the first Monday in January succeeding his election and until his successor is duly qualified. This section shall not be construed as governing the first election of district judges under this constitution.

[Sec. 105. Names the districts and the territory embraced by each. There are now ten districts (1910).]

Increase in judicial districts Sec. 106. The legislative assembly may, whenever two thirds of the members of each house shall concur therein, but not oftener than once in four years, increase the number of said judicial districts and the judges thereof; such districts shall be formed from compact territory and bounded by county lines, but such increase or change in the boundaries of the districts shall not work the removal of any judge from his office during the term for which he may have been elected or appointed.

Eligibility of district judge Sec. 107. No person shall be eligible to the office of district judge, unless he be learned in the law, be at least twenty-five years of age, and a citizen of the United States, nor unless he shall have resided within the State or territory of Dakota at least two years next preceding his election, nor unless he shall at the time of his election be an elector within the judicial district for which he is elected.

Clerk Sec. 108. There shall be a clerk of the district court in each organized county in which a court is holden who shall be elected by the qualified electors of the county, and shall hold his office for the same term as other county officers. He shall receive such compensation for his services as may be prescribed by law.

Appeals Sec. 109. Writs of error and appeals may be allowed from the decisions of the district courts to the supreme court under such regulations as may be prescribed by law.

County Courts

County courts Sec. 110. There shall be established in each county a county court which shall be a court of record, open at all times and

holden by one judge, elected by the electors of the county, and whose term of office shall be two years.

Sec. 111. The county court shall have exclusive original jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians, the sale of lands, by executors, administrators and guardians, and such other probate jurisdiction as may be conferred by law; provided, that whenever the voters of any county having a population of 2,000 or over shall decide by a majority vote that they desire the jurisdiction of said court increased above that limited by this constitution, then said county court shall have concurrent jurisdiction with the district courts in all civil actions where the amount in controversy does not exceed \$1,000, and in all criminal actions below the grade of felony, and in case it is decided by the voters of any county to so increase the jurisdiction of said county court, the jurisdiction in cases of misdemeanors arising under state laws which may have been conferred upon police magistrates shall cease. The qualifications of the judge of the county court in counties where the jurisdiction of said court shall have been increased shall be the same as those of the district judge, except that he shall be a resident of the county at the time of his election, and said county judge shall receive such salary for his services as may be provided by law. In case the voters of any county decide to increase the jurisdiction of said county courts, then such jurisdiction as thus increased shall remain until otherwise provided by law.

Jurisdiction of county courts

Increased jurisdiction

Salary

Justices of the Peace

Sec. 112. The legislative assembly shall provide by law for the election of justices of the peace in each organized county within the State. But the number of said justices to be elected in each organized county shall be limited by law to such a number as shall be necessary for the proper administration of justice. The justices of the peace herein provided for shall have concurrent jurisdiction with the district court in all civil actions when the amount in controversy, exclusive of costs, does not exceed \$200, and in counties where no county court with criminal jurisdiction exists they shall have such jurisdiction to hear and determine cases of misdemeanor as may be provided by law, but in no case shall said justices of the peace have jurisdiction when the boundaries of or title to real estate shall come in question. The legislative assembly shall have power to abolish the office of justice of the peace and confer that jurisdiction upon judges of county courts or elsewhere.

Justices of the peace

Jurisdiction

Police Magistrates

- Police magistrates elected Sec. 113. The legislative assembly shall provide by law for the election of police magistrates in cities, incorporated towns and villages, who in addition to their jurisdiction of all cases arising under the ordinances of said cities, towns and villages, shall be ex officio justices of the peace of the county in which said cities, towns and villages may be located. And the legislative assembly may confer upon said police magistrates the jurisdiction to hear, try and determine all cases of misdemeanors, and the prosecutions therein shall be by information.
- Jurisdiction of Sec. 114. Appeals shall lie from the county court, final decisions of justices of the peace and police magistrates in such cases and pursuant to such regulations as may be prescribed by law.
- Appeals from

Miscellaneous Provisions

- Sessions of courts Sec. 115. The time of holding courts in the several counties of a district shall be as prescribed by law, but at least two terms of the district court shall be held annually in each organized county, and the legislative assembly shall make provision for attaching unorganized counties or territories to organized counties for judicial purposes.
- Judges not eligible to other offices Sec. 116. Judges of the district courts may hold court in other districts than their own under such regulations as shall be prescribed by law.
- Courts of conciliation Sec. 117. No judge of the supreme or district court shall act as attorney or counselor at law.
- Judges not eligible to other offices Sec. 118. Until the legislative assembly shall provide by law for fixing the terms of court, the judges of the supreme and district courts shall fix the terms thereof.
- Judges not eligible to other offices Sec. 119. No judge of the supreme or district courts shall be elected or appointed to any other than judicial offices or be eligible thereto during the term for which he was elected or appointed such judge. All votes or appointments for either of them for any elective or appointive office except that of judge of the supreme court, or district court, given by the legislative assembly or the people, shall be void.
- Courts of conciliation Sec. 120. Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law or the powers and duties of such may be conferred upon other courts of justice; but such tribunals or other courts when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunals or courts.

ARTICLE V—Elective Franchise

Sec. 121. Every male person of the age of twenty-one years and upwards belonging to either of the following classes, who shall have resided in the State one year, in the county six months and in the precinct ninety days next preceding any election, shall be deemed a qualified elector at such election:

Who may
vote

First. Citizens of the United States.

Citizens
only

Second. Persons of foreign birth who shall have declared their intention to become citizens one year and not more than six years prior to such election, conformably to the naturalization laws of the United States.

Third. Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election.

Note.—This section amended by Article 2, amendments to the constitution.

Sec. 122. The legislative assembly shall be empowered to make further extensions of suffrage hereafter, at its discretion, to all citizens of mature age and sound mind, not convicted of crime, without regard to sex; but no law extending or restricting the right of suffrage shall be in force until adopted by a majority of the electors of the State voting at a general election.

Extension
of suffrage
to women

Sec. 123. Electors shall in all cases except treason, felony, breach of the peace or illegal voting, be privileged from arrest on the days of election during their attendance at, going to and returning from such election, and no elector shall be obliged to perform military duty on the day of election, except in time of war or public danger.

Electors
protected

Sec. 124. The general elections of the State shall be biennial, and shall be held on the first Tuesday after the first Monday in November; provided, that the first general election under this constitution shall be held on the first Tuesday after the first Monday in November, A. D. 1890.

Time of
elections

Sec. 125. No elector shall be deemed to have lost his residence in this State by reason of his absence on business of the United States or of this State or in the military or naval service of the United States.

Absentee
electors

Sec. 126. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of his being stationed therein.

Bona fide
residents

Sec. 127. No person who is under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, unless restored to civil rights.

Disquali-
fied elect-
ors

Note.—This section amended by Article 2, amendments to the constitution.

Women
vote

Sec. 128. Any woman having the qualifications enumerated in section 121 of this article, as to age, residence and citizenship, and including those now qualified by the laws of the territory, may vote for all school officers, and upon all questions pertaining solely to school matters, and be eligible to any school office.

Secret
ballot

Sec. 129. All elections by the people shall be by secret ballot, subject to such regulations as shall be provided by law.

ARTICLE VI—Municipal Corporations

Organiza-
tion of
municipal
bodies

Sec. 130. The legislative assembly shall provide by general law for the organization of municipal corporations, restricting their powers as to levying taxes and assessments, borrowing money and contracting debts; and money raised by taxation, loan or assessment for any purpose shall not be diverted to any other purpose except by authority of law.

ARTICLE VII—Corporations Other Than Municipal

Private
corpora-
tions

Sec. 131. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the State; but the legislative assembly shall provide by general laws for the organization of all corporations hereafter to be created, and any such law, so passed, shall be subject to future repeal or alteration.

Bona fide
organiza-
tions

Sec. 132. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith at the time this constitution takes effect, shall thereafter have no validity.

Corpora-
tion
charters

Sec. 133. The legislative assembly shall not remit the forfeiture of the charter to any corporation now existing, nor alter or amend the same, nor pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution.

Right of
eminent
domain

Sec. 134. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of this State shall never be abridged, or so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well being of the State.

Police
power of
State

Sec. 135. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

Election of
corpora-
tion di-
rectors

Sec. 136. No foreign corporation shall do business in this State without having one or more places of business and an authorized agent or agents in the same, upon whom process may be served.

Foreign
corpora-
tions

Sec. 137. No corporation shall engage in any business other than that expressly authorized in its charter.

Business of
corpora-
tion limit-
ed

Sec. 138. No corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice given in pursuance of law.

Stock of
corpora-
tion must
be paid up

Sec. 139. No law shall be passed by the legislative assembly granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied for such purposes.

Corpora-
tions must
get consent
of local
bodies

Sec. 140. Every railroad corporation organized and doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in the State for the transaction of its business, where transfers of its stock shall be made and in which shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed, and by whom, the names of the owners of its stock and the amount owned by them respectively; the amount of stock paid in and by whom and the transfers of said stock; the amount of its assets and liabilities and the names and place of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath to the auditor of public accounts, or some officer or officers to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the legislative assembly shall pass laws enforcing by suitable penalties the provisions of this section; provided, the provisions of this section shall not be so construed as to apply to foreign corporations.

State in-
spection of
railroads

Railroads
must re-
port an-
nually

Sec. 141. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty

Competi-
tion safe-
guarded

days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section by any railroad corporation by lease or otherwise, shall work a forfeiture of its charter.

State may
regulate
railroad
rates

Sec. 142. Railways heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and all railroads, sleeping car, telegraph, telephone and transportation companies of passengers, intelligence and freight are declared to be common carriers and subject to legislative control; and the legislative assembly shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers, intelligence and freight, as such common carriers, from one point to another in this State; provided, that appeal may be had to the courts of this State from the rates so fixed; but the rates fixed by the legislative assembly or board of railroad commissioners shall remain in force pending the decision of the courts.

Right to
organize
new rail-
roads

Sec. 143. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect at the state line with the railroads of other States. Every railroad company shall have the right with its road to intersect, connect with or cross any other, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

"Corpora-
tion" is a
private
business

Sec. 144. The term "corporation" as used in this article shall not be understood as embracing municipalities or political subdivisions of the State unless otherwise expressly stated, but it shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships.

State
banks
must "se-
cure" issue
of money

Sec. 145. If a general banking law be enacted, it shall provide for the registry and countersigning by an officer of the State, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the state treasurer for the redemption of such notes or bills.

Illegal for
combina-
tions to
control
prices

Sec. 146. Any combination between individuals, corporations, associations, or either, having for its object or effect the controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended in this State, whenever the owner or owners thereof violate this article, shall be deemed annulled and become void.

ARTICLE VIII—Education

Sec. 147. A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the State of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Free public education

Non-sectarian control

Sec. 148. The legislative assembly shall provide, at its first session after the adoption of this constitution, for a uniform system for free public schools throughout the State, beginning with the primary and extending through all grades up to and including the normal and collegiate course.

Uniform system in public schools

Sec. 149. In all schools instructions shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind.

What should be taught

Sec. 150. A superintendent of schools for each county shall be elected every two years, whose qualifications, duties, powers and compensation shall be fixed by law.

Superintendent of schools

Sec. 151. The legislative assembly shall take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements.

Citizens must be taught to read and write

Sec. 152. All colleges, universities, and other educational institutions, for the support of which lands have been granted to this State, or which are supported by a public tax, shall remain under the absolute and exclusive control of the State. No money raised for the support of the public schools of the State shall be appropriated to or used for the support of any sectarian school.

State control of state schools

ARTICLE IX—School and Public Lands

Sec. 153. All proceeds of the public lands that have heretofore been or may hereafter be granted by the United States for the support of the common schools in this State; all such per centum as may be granted by the United States on the sale of public lands; the proceeds of property that shall fall to the State by escheat; the proceeds of all gifts and donations to the State for common schools, or not otherwise appropriated by the terms of the gift, and all other property otherwise acquired for common schools, shall be and remain a perpetual fund for the mainte-

Permanent school fund—sources of

Increase but not diminish

nance of the common schools of the State. It shall be deemed a trust fund, the principal of which shall forever remain inviolate and may be increased but never diminished. The State shall make good all losses thereof.

School
funds,
how ap-
plied

Sec. 154. The interest and income of this fund together with the net proceeds of all fines for violation of state laws, and all other sums which may be added thereto by law shall be faithfully used and applied each year for the benefit of the common schools of the State, and shall be for this purpose apportioned among and between all the several common school corporations of the State in proportion to the number of children in each of school age, as may be fixed by law, and no part of the fund shall ever be diverted even temporarily, from this purpose, or used for any other purpose whatever than the maintenance of common schools for the equal benefit of all the people of the State; provided, however, that if any portion of the interest or income aforesaid shall be not expended during any year, said portion shall be added to and become a part of the school fund.

Sale of
public
land for
school
fund pur-
poses

Sec. 155. After one year from the assembling of the first legislative assembly the lands granted to the State from the United States for the support of the common schools may be sold upon the following conditions and no other: No more than one fourth of all such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one half of the remainder within ten years after the same become saleable as aforesaid. The residue may be sold at any time after the expiration of said ten years. The legislative assembly shall provide for the sale of all school lands subject to the provisions of this article. The coal lands of the State shall never be sold, but the legislative assembly may by general laws provide for leasing the same. The words "coal lands" shall include lands bearing lignite coal.

Who con-
trols
school
lands

Sec. 156. The superintendent of public instruction, governor, attorney general, secretary of state and state auditor shall constitute a board of commissioners, which shall be denominated the "Board of University and School Lands" and, subject to the provisions of this article, and any law that may be passed by the legislative assembly, said board shall have control of the appraisement, sale, rental and disposal of all school and university lands, and shall direct the investment of the funds arising therefrom in the hands of the state treasurer, under the limitations in section 160 of this article.

How
school
lands are
evaluated

Sec. 157. The county superintendent of common schools, the chairman of the county board and the county auditor shall constitute boards of appraisal, and under the authority of the state board of university and school lands shall appraise all school

lands within their respective counties which they may from time to time recommend for sale at their actual value under the prescribed terms, and shall first select and designate for sale the most valuable lands.

Sec. 158. No land shall be sold for less than the appraised value and in no case for less than \$10 per acre. The purchaser shall pay one fifth of the price in cash and the remaining four fifths as follows: One fifth in five years, one fifth in ten years, one fifth in fifteen years and one fifth in twenty years, with interest at the rate of not less than six per centum, payable annually in advance. All sales shall be held at the county seat of the county in which the land to be sold is situate, and shall be at public auction and to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of one-quarter section, and those so subdivided in the smallest subdivisions. All lands designated for sale and not sold within two years after appraisal shall be reappraised before they are sold. No grant or patent for any such lands shall issue until payment is made for the same; provided, that the lands contracted to be sold by the State shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then and thereupon the contract of sale for such lands shall become null and void.

How school land is sold, and price

Note.—This section amended by Amendment Article IX.

Sec. 159. All lands, money or other property donated, granted or received from the United States or any other source for a university, school of mines, reform school, agricultural college, deaf and dumb asylum, normal school or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the State, and the State shall make good all losses thereof.

Money from sale of other public lands set aside as permanent funds

Sec. 160. All lands mentioned in the preceding section shall be appraised and sold in the same manner and under the same limitations and subject to all the conditions as to price and sale as provided above for the appraisal and sale of lands for the bene-

How these lands are sold

fit of common schools; but a distinct and separate account shall be kept by the proper officers of each of said funds; provided, that the limitations as to the time in which school land may be sold shall apply only to lands granted for the support of common schools.

Renting
of public
lands

Sec. 161. The legislative assembly shall have authority to provide by law for the leasing of lands granted to the State for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years. Said lands shall only be leased for pasturage and meadow purposes and at a public auction after notice as heretofore provided in case of sale; provided, that all of said school lands now under cultivation may be leased, at the discretion and under the control of the board of university and school lands, for other than pasturage and meadow purposes until sold. All rents shall be paid in advance.

Limitation
on invest-
ment of
education-
al funds

Sec. 162. The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations within the State, bonds of the United States, bonds of the State of North Dakota, or in first mortgages on farm lands in the State, not exceeding in amount one third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisers of school lands.

Note.—This section amended by Article 8, amendments to the constitution, also by Article 9, adopted 1908.

Granting
of public
lands re-
stricted

Sec. 163. No law shall ever be passed by the legislative assembly granting to any person, corporation or association any privileges by reason of the occupation, cultivation or improvement of any public lands by said person, corporation or association subsequent to the survey thereof by the general government. No claim for the occupation, cultivation or improvement of any public lands shall ever be recognized, nor shall such occupation, cultivation or improvement of any public lands ever be used to diminish either directly or indirectly, the purchase price of said lands.

Assembly
disposes of
any other
public
lands

Sec. 164. The legislative assembly shall have authority to provide by law for the sale or disposal of all public lands that have been heretofore, or may hereafter be granted by the United States to the State for purposes other than set forth and named in sections 153 and 159 of this article. And the legislative assembly, in providing for the appraisalment, sale, rental and disposal of the same, shall not be subject to the provisions and limitations of this article.

Sec. 165. The legislative assembly shall pass suitable laws for the safekeeping, transfer and disbursement of the state school funds; and shall require all officers charged with the same or the

safe keeping thereof to give ample bonds for all moneys and funds received by them, and if any of said officers shall convert to his own use in any manner or form, or shall loan with or without interest or shall deposit in his own name, or otherwise than in the name of the State of North Dakota, or shall deposit in any banks or with any person or persons, or exchange for other funds or property any portion of the school funds aforesaid or purposely allow any portion of the same to remain in his own hands uninvested, except in the manner prescribed by law, every such act shall constitute an embezzlement of so much of the aforesaid school funds as shall be thus taken or loaned, or deposited, or exchanged, or withheld, and shall be a felony; and any failure to pay over, produce or account for, the state school funds or any part of the same entrusted to any such officer, as by law required or demanded, shall be held and be taken to be prima facie evidence of such embezzlement.

Guarding
of the
school
fund by
assembly

ARTICLE X—County and Township Organization

Sec. 166. The several counties in the territory of Dakota lying north of the seventh standard parallel as they now exist, are hereby declared to be counties of the State of North Dakota.

Original
counties

Sec. 167. The legislative assembly shall provide by general law for organizing new counties, locating the county seats thereof temporarily, and changing county lines, but no new county shall be organized, nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than one thousand bona fide inhabitants. And in the organization of new counties and in changing the lines of organized counties and boundaries of congressional townships, the natural boundaries shall be observed as nearly as may be.

New
counties

Boundary
and size of
counties

Sec. 168. All changes in the boundaries of organized counties before taking effect shall be submitted to the electors of the county or counties to be affected thereby at a general election and be adopted by a majority of all the legal votes cast in each county at such election; and in case any portion of an organized county is stricken off and added to another the county to which such portion is added shall assume and be holden for an equitable proportion of the indebtedness of the county so reduced.

Changes in
boundaries
by people

Sec. 169. The legislative assembly shall provide by general law, for changing county seats in organized counties, but it shall have no power to remove the county seat of any organized county.

Locating
county
seats

Sec. 170. The legislative assembly shall provide by general law for township organization, under which any county may organ-

How a
township
is organ-
ized

ize, whenever a majority of all the legal voters of such county, voting at a general election, shall so determine, and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of said county by the board of county commissioners, may be dispensed with by a majority vote of the people voting at any general election; and the affairs of said county may be transacted by the chairmen of the several township boards of said county, and such others as may be provided by law for incorporated cities, towns or villages within such county.

People
may
change
form of
local gov-
ernment

Sec. 171. In any county that shall have adopted a system of government by the chairmen of the several township boards, the question of continuing the same may be submitted to the electors of such county at a general election in such a manner as may be provided by law, and if a majority of all the votes cast upon such question shall be against said system of government, then such system shall cease in said county, and the affairs of said county shall then be transacted by a board of county commissioners as is now provided by the laws of the territory of Dakota.

Fiscal af-
fairs of
county

Sec. 172. Until the system of county government by the chairmen of the several township boards is adopted by any county, the fiscal affairs of said county shall be transacted by a board of county commissioners. Said board shall consist of not less than three and not more than five members, whose terms of office shall be prescribed by law. Said board shall hold sessions for the transaction of county business as shall be provided by law.

County
officials

Sec. 173. At the first general election held after the adoption of this constitution, and every two years thereafter, there shall be elected in each organized county in the state, a county judge, clerk of court, register of deeds, county auditor, treasurer, sheriff and state's attorney, who shall be electors of the county in which they are elected, and who shall hold their office until their successors are elected and qualified. The legislative assembly shall provide by law for such other county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers. The sheriff and treasurer of any county shall not hold their respective offices for more than four years in succession.

Compensa-
tion fixed
by assem-
bly

ARTICLE XI—Revenue and Taxation

How the
State
gets its
revenues

Sec. 174. The legislative assembly shall provide for raising revenue sufficient to defray the expenses of the State for each year, not to exceed in any one year four (4) mills on the dollar

of the assessed valuation of all taxable property in the State, to be ascertained by the last assessment made for state and county purposes, and also a sufficient sum to pay the interest on the state debt.

Sec. 175. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

Tax acts explicit

Sec. 176. Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the state, county and municipal corporations, both real and personal, shall be exempt from taxation, and the legislative assembly shall by a general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation; but the legislative assembly may, by law, provide for the payment of a per centum of gross earnings of railroad companies to be paid in lieu of all state, county, township and school taxes on property exclusively used in and about the prosecution of the business of such companies as common carriers, but no real estate of said corporations shall be exempted from taxation, in the same manner, and on the same basis as other real estate is taxed, except road-bed, right of way, shops and buildings used exclusively in their business as common carriers, and whenever and so long as such law providing for the payment of a per centum on earnings shall be in force, that part of section 179 of this article relating to assessment of railroad property shall cease to be in force.

All property taxed uniformly, but certain exemptions made

Gross earnings of railroads may be taxed

Note.—Addenda to section 176, adopted in 1905. Amendment 4.

Sec. 177. All improvements on land shall be assessed in accordance with section 179, but plowing shall not be considered as an improvement or add to the value of land for the purpose of assessment.

Improvements on land taxed

Sec. 178. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State or any county or other municipal corporation shall be a party.

Taxing power cannot be surrendered

Sec. 179. All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, town, village or district in which it is situated, in the manner prescribed by law. The franchise, roadway, road-bed, rails, and rolling stock of all railroads operated in this State shall be assessed by the state board of equalization at their actual value and such assessed valuation shall be apportioned to the counties, cities, towns, townships and districts in which said roads are located, as a basis for taxation of such property in proportion to the

Property assessed where located

How railroad property is assessed

number of miles of railway laid in such counties, cities, towns, townships and districts.

Note.—This section amended by Article 4, amendments to the constitution.

Poll tax Sec. 180. The legislative assembly may provide for the levy, collection and disposition of an annual poll tax of not more than one dollar and fifty cents on every male inhabitant of this State over twenty-one and under fifty years of age, except paupers, idiots, insane persons and Indians not taxed.

Sec. 181. The legislative assembly shall pass all laws necessary to carry out the provisions of this article.

ARTICLE XII—Public Debt and Public Works

State may
borrow
money Sec. 182. The State may, to meet casual deficits or failure
Debt limit in the revenue or in case of extraordinary emergencies contract
debts, but such debts shall never in the aggregate exceed the
sum of \$200,000, exclusive of what may be the debt of North
Dakota at the time of the adoption of this constitution. Every
such debt shall be authorized by law for certain purposes to be
definitely mentioned therein, and every such law shall provide
How state
debts are
paid for levying an annual tax sufficient to pay the interest semi-
annually, and the principal within thirty years from the pas-
sage of such law, and shall specially appropriate the proceeds
of such tax to the payment of said principal and interest, and such
appropriation shall not be repealed nor the tax discontinued
until such debt, both principal and interest, shall have been
fully paid. No debt in excess of the limit named shall be in-
Debt limit incurred except for the purpose of repelling invasion, suppressing
exceeded insurrection, defending the State in time of war, or to provide
for public defense in case of threatened hostilities; but the issuing
of new bonds to refund existing indebtedness, shall not be con-
sidered to be any part or portion of said \$200,000.

Local gov-
ernments
may also
borrow
money Sec. 183. The debt of any county, township, city, town,
school district or any other political subdivision, shall never
exceed five (5) per centum upon the assessed value of the taxable
property therein; provided, that any incorporated city may by
a two-thirds vote, increase such indebtedness three per centum
on such assessed value beyond said five per cent limit. In
Debt estimating the indebtedness which a city, county, township,
limited school district or any other political subdivision may incur, the
entire amount of existing indebtedness, whether contracted prior
or subsequent to the adoption of this constitution shall be in-
cluded; provided, further, that any incorporated city may become
indebted in any amount not exceeding four per centum on such
assessed value without regard to the existing indebtedness of

such city, for the purpose of constructing or purchasing water works for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, and for no other purpose whatever. All bonds or obligations in excess of the amount of indebtedness permitted by this constitution, given by any city, county, township, town, school district or any other political subdivision, shall be void.

Debt limit
extended
in cities

Sec. 184. Any city, county, township, town, school district or any other political subdivision incurring indebtedness shall at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrevocable until such debt be paid.

Local gov-
ernments
must pay
their debts

Sec. 185. Neither the State, nor any county, city, township, town, school district or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the State engage in any work of internal improvement unless authorized by a two-thirds vote of the people.

State shall
not aid
individuals
financially

State
subsidies

Sec. 186. No money shall be paid out of the state treasury except upon appropriation by law and on warrant drawn by the proper officer, and no bills, claims, accounts or demands against the State or any county or other political subdivision, shall be audited, allowed or paid until a full, itemized statement in writing shall be filed with the officer or officers whose duty it may be to audit the same.

"Appro-
priations"
necessary
before pay-
ing out
money

Sec. 187. No bond or evidence of indebtedness of the State shall be valid unless the same shall have endorsed thereon a certificate signed by the auditor and secretary of state, showing that the bond or evidence of debt is issued pursuant to law and is within the debt limit. No bond or evidence of debt of any county, or bond of any township or other political subdivision shall be valid unless the same have endorsed thereon a certificate signed by the county auditor, or other officer authorized by law to sign such certificate, stating that said bond, or evidence of debt is issued pursuant to law and is within the debt limit.

Legalizing
state
debts

ARTICLE XIII—Militia

Sec. 188. The militia of this State shall consist of all able bodied male persons residing in the State, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or of this State. Persons whose

State
militia

religious tenets or conscientious scruples forbid them to bear arms shall not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

Militia
organiza-
tion

Sec. 189. The militia shall be enrolled, organized, uniformed, armed and disciplined in such a manner as shall be provided by law, not incompatible with the constitution or laws of the United States.

Authorized
volunteers

Sec. 190. The legislative assembly shall provide by law for the establishment of volunteer organizations of the several arms of the service which shall be classed as active militia; and no other organized body of armed men shall be permitted to perform military duty in this State except the army of the United States, without the proclamation of the governor of the State.

Militia
officers

Sec. 191. All militia officers shall be appointed or elected in such a manner as the legislative assembly shall provide.

Officers
commis-
sioned by
governor

Sec. 192. The commissioned officers of the militia shall be commissioned by the governor, and no commissioned officer shall be removed from office except by sentence of court martial, pursuant to law.

Militia
free from
arrest

Sec. 193. The militia forces shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters, parades and elections of officers, and in going to and returning from the same.

ARTICLE XIV—Impeachment and Removal from Office

Power of
impeach-
ment

Sec. 194. The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all members elected shall be necessary to an impeachment.

Senate
tries im-
peach-
ments

Sec. 195. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to the law and evidence. No person shall be convicted without the concurrence of two thirds of the members elected. When the governor or lieutenant governor is on trial the presiding judge of the supreme court shall preside.

Two-thirds
vote nec-
essary

Governor
may be
impeached

Sec. 196. The governor and other state and judicial officers except county judges, justices of the peace and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under the State. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

Sec. 197. All officers not liable to impeachment, shall be

subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law.

Officials
may be
removed

Sec. 198. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

Sec. 199. On trial of impeachment against the governor, the lieutenant governor shall not act as a member of the court.

Impeach-
ment of
governor

Sec. 200. No person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial.

Sec. 201. No person shall be liable to impeachment twice for the same offense.

Only one
impeach-
ment

ARTICLE XV—Future Amendments

Sec. 202. Any amendment or amendments to this constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the legislative assembly so next chosen as aforesaid such proposed amendment or amendments, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative assembly voting thereon, such amendment or amendments shall become a part of the constitution of this State. If two or more amendments shall be submitted at the same time they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

How state
constitu-
tion may
be amend-
ed

Amend-
ments
must be
ratified by
the people

ARTICLE XVI—Compact With the United States

Sec. 203. The following article shall be irrevocable without the consent of the United States and the people of this State:

Religious
liberty

First. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

U. S. pub-
lic lands

Second. The people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without this State shall never be taxed at a higher rate than the lands belonging to residents of this State: that no taxes shall be imposed by this State on lands or property therein, belonging to, or which may hereafter be purchased by the United States, or reserved for its use. But nothing in this article shall preclude this State from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person, a title thereto, by patent or other grant save and except such lands as have been or may be granted to any Indian or Indians under any acts of congress containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such an extent, as is, or may be provided in the act of congress granting the same.

Settle-
ments of
state
debts

Third. In order that payment of the debts and liabilities contracted or incurred by and on behalf of the territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an act of congress approved February 22, 1889, entitled "An act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original States and to make donations of public lands to such States," the States of North Dakota and South Dakota, by proceedings of a joint commission, duly appointed under said act, the sessions whereof were held at Bismarek, in said State of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the territory of Dakota which shall be assumed and paid by each of the States of North Dakota and South Dakota, respectively, to wit:

This agreement shall take effect and be in force from and after the admission into the union as one of the United States of America, of either the State of North Dakota or the State of South Dakota.

The words "State of North Dakota," wherever used in this

agreement, shall be taken to mean the territory of North Dakota in case the State of South Dakota shall be admitted into the union prior to the admission into the union of the State of North Dakota; and the words "State of South Dakota," wherever used in this agreement, shall be taken to mean the territory of South Dakota in case the State of North Dakota shall be admitted into the union prior to the admission into the union of the State of South Dakota.

Territory
became
State

The said State of North Dakota shall assume and pay all bonds issued by the territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain act of the legislative assembly of the territory of Dakota, approved March 8, 1889, entitled "An act to provide for the refunding of outstanding warrants drawn on the capitol building fund."

State as-
sumes
territory's
debts

The State of South Dakota shall assume and pay all bonds issued by the territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota.

That is to say: The State of North Dakota shall assume and pay the following bonds and indebtedness, to wit:

Bonds issued on account of the hospital for insane at Jamestown, North Dakota, the face aggregate of which is \$266,000; also bonds issued on account of the North Dakota university at Grand Forks, North Dakota, the face aggregate of which is \$96,700; also, bonds issued on account of the penitentiary at Bismarck, North Dakota, the face aggregate of which is \$93,600; also, refunding capitol building warrants dated April 1, 1889, \$83,507.46.

Amount of
debts
taken
over by
the State

And the State of South Dakota shall assume and pay the following bonds and indebtedness, to wit:

Bonds issued on account of the hospital for the insane at Yankton, South Dakota, the face aggregate of which is \$210,000; also, bonds issued on account of the school for deaf mutes at Sioux Falls, South Dakota, the face aggregate of which is \$51,000; also, bonds issued on account of the university at Vermillion, South Dakota, the face aggregate of which is \$75,000; also, bonds issued on account of the penitentiary at Sioux Falls, South Dakota, the face aggregate of which is \$94,300; also, bonds issued on account of the agricultural college at Brookings, South Dakota, the face aggregate of which is \$97,500; also, bonds issued on account of the normal school at Madison, South Dakota, the face aggregate of which is \$49,400; also, bonds issued on

account of the school of mines at Rapid City, South Dakota, the face aggregate of which is \$33,000; also, bonds issued on account of the reform school at Plankinton, South Dakota, the face aggregate of which is \$30,000; also, bonds issued on account of the normal school at Spearfish, South Dakota, the face aggregate of which is \$25,000; also, bonds issued on account of the soldiers' home at Hot Springs, South Dakota, the face aggregate of which is \$45,000.

Division of
debts be-
tween
North and
South
Dakota

The States of North Dakota and South Dakota shall pay one half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore or hereafter incurred on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

The State of South Dakota shall pay to the State of North Dakota \$46,500, on account of the excess of territorial appropriations for the permanent improvement of territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the territorial library, and in full settlement of unbalanced accounts, and of all claims against the territory of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of Northern Pacific railroad lands, and the payment of said amount shall discharge and exempt the State of South Dakota from all liability for or on account of the several matters hereinbefore referred to; nor shall either State be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the territory of Dakota had such territory remained in existence, and which liability shall grow out of matters connected with any public institutions, grounds or buildings of the territory situated or located within the boundaries of the other State.

Final ad-
justment
of debts

A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 9, 1889; and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each State shall be charged with one half of all other expenses of the territorial government during the same time. All moneys paid into the treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person, within the limits of the proposed State of North Dakota, shall be credited to the State of

North Dakota, and all sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed State of South Dakota shall be credited to the State of South Dakota, except that any and all taxes on gross earnings paid into said treasury by railroad corporations, since the 8th day of March, 1889, based upon earnings of years prior to 1888, under and by virtue of the act of the legislative assembly of the territory of Dakota, approved March 7, 1889, and entitled "An act providing for the levy and collection of taxes upon property of railroad companies in this territory," being chapter 107 of the session laws of 1889 (that is, the part of such sums going to the territory), shall be equally divided between the States of North Dakota and South Dakota, and all taxes heretofore or hereafter paid into said treasury under and by virtue of the act last mentioned, based upon the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the territorial treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed State of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota; each State shall be credited also with all balances of appropriations made by the seventeenth legislative assembly of the territory of Dakota for the account of the public institutions, grounds or buildings situated within its limits remaining unexpended on March 8, 1889. If there shall be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each State shall, at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such State in excess of the receipts from counties, municipalities, railroad corporations or persons within the limits of said State as provided in this article; and if there should be a surplus at the time of such final adjustment, each State shall be entitled to the amounts received from counties, municipalities, railroad corporations or persons within its limits over and above the amount charged it. And the State of North Dakota hereby obligates itself to pay such part of the debts and liabilities of the territory of Dakota as is declared by the foregoing agreement to be its proportion thereof, the same as if such proportion had been originally created by said State of North Dakota as its own debt or liability.

Sec. 204. Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina and Fort Totten, heretofore declared by the presi-

U. S.
military
reserva-
tions

dent of the United States; provided, legal process, civil and criminal, of this State, shall extend over such reservations in all cases in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

U. S. gov-
ernment
grants
land to
State

Sec. 205. The State of North Dakota hereby accepts the several grants of land granted by the United States to the State of North Dakota by an act of congress, entitled "An act to provide for the division of Dakota into two States, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the union on equal footing with the original States, and to make donations of public lands to such States," under the conditions and limitations therein mentioned; reserving the right, however, to apply to congress for modification of said conditions and limitations in case of necessity.

ARTICLE XVII—Miscellaneous

Boundaries
of North
Dakota

Sec. 206. The name of this State shall be "North Dakota." The State of North Dakota shall consist of all the territory included within the following boundary, to wit: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence south up the main channel of the same and along the boundary line of the State of Minnesota to a point where the seventh standard parallel intersects the same; thence west along said seventh standard parallel produced due west to a point where it intersects the twenty-seventh meridian of longitude west from Washington; thence north on said meridian to a point where it intersects the forty-ninth degree of north latitude; thence east along said line to place of beginning.

Seal of
North
Dakota

Sec. 207. The following described seal is hereby declared to be and hereby constituted the great seal of the State of North Dakota, to wit: A tree in the open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left, a bow crossed with three arrows, and an Indian on horseback pursuing a buffalo toward the setting sun; the foliage of the tree arched by a half circle of forty-two stars, surrounded by the motto "Liberty and Union Now and Forever, One and Inseparable;" the words "Great Seal" at the top, the words "State of North Dakota" at the bottom; "October 1st" on the left, and "1889" on the right. The seal to be two and one-half inches in diameter.

Sec. 208. The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws exempt-

ing from forced sale to all heads of families a homestead, the value of which shall be limited and defined by law; and a reasonable amount of personal property; the kind and value shall be fixed by law. This section shall not be construed to prevent liens against the homestead for labor done and materials furnished in the improvement thereof, in such manner as may be prescribed by law.

Debtor's
property
protected

Sec. 209. The labor of children under twelve years of age shall be prohibited in mines, factories and workshops in this State.

Child labor
prohibited

Sec. 210. All flowing streams and natural water courses shall forever remain the property of the State for mining, irrigating and manufacturing purposes.

Flowing
streams
belong to
State

Sec. 211. Members of the legislative assembly and judicial departments, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of North Dakota; and that I will faithfully discharge the duties of the office of..... according to the best of my ability, so help me God" (if an oath), (under pain and penalty of perjury, if an affirmation), and no other oath, declaration or test shall be required as a qualification for any office or public trust.

Oath of
office

Sec. 212. The exchange of "black lists" between corporations shall be prohibited.

"Black
lists" pro-
hibited

Sec. 213. The real and personal property of any woman in this State, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property and shall not be liable for the debts of her husband.

Woman's
property
rights

ARTICLE XVIII—Congressional and Legislative Apportionment

[Omitted. This article provides for a temporary division of the State into senatorial districts. Present districts are formed by the legislative assembly.]

ARTICLE XIX—Public Institutions

Sec. 215. The following public institutions of the State are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States, in the act of congress approved February 22, 1889, to be disposed of and used in such manner as the legislative assembly

Location
of public
institu-
tions

may prescribe, subject to the limitations provided in the article on school and public lands contained in this constitution.

State
capitol

First. The seat of government at the city of Bismarck in the county of Burleigh.

State
university

Second. The state university and the school of mines at the city of Grand Forks, in the county of Grand Forks.

Agricultural
college

Third. The agricultural college at the city of Fargo, in the county of Cass.

State normal
school

Fourth. A state normal school at the city of Valley City, in the county of Barnes; and the legislative assembly in apportioning the grant of eighty thousand acres of land for normal schools made in the act of congress referred to shall grant to the said normal school at Valley City, as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.

Deaf and
dumb
asylum

Fifth. The deaf and dumb asylum at the city of Devils Lake, in the county of Ramsey.

Note.—See Amendments, Article 5.

Reform
school

Sixth. A state reform school at the city of Mandan, in the county of Morton.

State normal
school

Seventh. A state normal school at the city of Mayville, in the county of Traill, and the legislative assembly in apportioning the grant of lands made by congress in the act aforesaid, for state normal schools, shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.

Insane
asylum

Eighth. A state hospital for the insane and institution for the feeble minded in connection therewith, at the city of Jamestown, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the act of congress aforesaid for "other educational and charitable institutions" to the benefit and for the endowment of said institution.

Note.—See Amendments, Article 6.

Sec. 216. The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred and seventy thousand acres of land made by the United States for "other educational and charitable institutions," as is allotted by law, viz:

Soldiers'
home

First. A soldiers' home, when located, or such other charitable institution as the legislative assembly may determine, at Lisbon, in the county of Ransom, with a grant of forty thousand acres of land.

Blind
asylum

Second. A blind asylum, or such other institution as the legislative assembly may determine, at such place in the county of Pembina as the qualified electors of said county may determine

at an election to be held as prescribed by the legislative assembly, with a grant of thirty thousand acres.

Third. An industrial school and school for manual training, or such other educational or charitable institution as the legislative assembly may provide, at the town of Ellendale, in the county of Dickey, with a grant of forty thousand acres.

Industrial school

Fourth. A school of forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.

School of forestry

Fifth. A scientific school, or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton, county of Richland, with a grant of forty thousand acres; provided, that no other institution of a character similar to any one of those located by this article shall be established or maintained without a revision of this constitution.

Scientific school

Note.—This section amended by Articles 5 and 6, amendments to the constitution.

ARTICLE XX—Prohibition

Sec. 217. No person, association or corporation shall within this State, manufacture for sale or gift, any intoxicating liquors, and no person, association or corporation shall import any of the same for sale or gift, or keep or sell or offer the same for sale, or gift, barter or trade as a beverage. The legislative assembly shall by law prescribe regulations for the enforcement of the provisions of this article and shall thereby provide suitable penalties for the violation thereof.

"Prohibition"

AMENDMENTS TO CONSTITUTION

ARTICLE I (Adopted 1894)

The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale of lottery or gift enterprise tickets.

No lotteries allowed

ARTICLE II (Adopted 1900)

Sec. 121. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the State for one year and in the county six months, and in the precinct ninety days next preceding any election, shall be a qualified elector at such election.

Suffrage Who may vote?

First—Citizens of the United States.

Citizens

Civilized
Indians

Second—Civilized persons of Indian descent, who shall have severed their tribal relations two years next preceding such election.

Sec. 127. No person who is under guardianship, non compos mentis or insane, shall be qualified to vote at any election; nor any person convicted of treason or felony, unless restored to civil rights; and the legislature shall by law establish an educational test as a qualification, and may prescribe penalties for failing, neglecting or refusing to vote at any general election.

ARTICLE III (Adopted 1900)

Board of
pardons

Sec. 76. The governor shall have power in conjunction with the board of pardons, of which the governor shall be ex officio a member and the other members of which shall consist of the attorney general of the State of North Dakota, the chief justice of the supreme court of the State of North Dakota, and two qualified electors who shall be appointed by the governor, to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction for all offenses except treason and cases of impeachment; but the legislative assembly may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Upon conviction of treason the governor shall have the power to suspend the execution of sentence until the case shall be reported to the legislative assembly at its next regular session, when the legislative assembly shall either pardon or commute the sentence, direct the execution of the sentence or grant further reprieve. The governor shall communicate to the legislative assembly at each regular session each case of remission of fine, reprieve, commutation or pardon granted by the board of pardons, stating the name of the convict, the crime for which he is convicted, the sentence and its date and the date of remission, commutation, pardon or reprieve, with their reasons for granting the same.

May par-
don—when

ARTICLE IV (Adopted 1900)

Assessing
property
for taxa-
tion

Sec. 179. All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, village or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads, and the franchise and all other property of all express companies, freight line companies, car equipment companies, sleeping car companies, dining car companies, telegraph or telephone companies or corporations operated in this State and used directly or indirectly in the carrying of persons, property or messages, shall be assessed by the state board of equaliza-

tion at their actual value, and such assessed value shall be apportioned to the counties, cities, towns, villages, townships and districts in which such railroad companies, express companies, sleeping car companies, dining car companies, telegraph and telephone companies are located, or through which they are operated, as a basis for the taxation of such property, in proportion to the number of miles of such property, within such counties, cities, towns, villages, townships and districts, or over which any part of such property is used or operated within such counties, towns, villages, townships and districts, But should any railroad allow any portion of its roadway to be used for any purpose other than the operation of a railroad thereon, such portion of its roadway, while so used, shall be assessed in the manner provided for the assessment of other real property.

Assessing
railroads
and other
public
service
corpora-
tions

ARTICLE V (Adopted 1904)

Subdivision 5 of section 215.

Fifth. The school for the deaf and dumb of North Dakota, at the City of Devils Lake, in the county of Ramsey.

Deaf and
dumb
school

ARTICLE VI (Adopted 1904)

Subdivision 8 of section 215.

Eighth. A state hospital for the insane at the city of Jamestown, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the act of congress aforesaid for "other educational and charitable institutions," to the benefit and for the endowment of said institution, and there shall be located at or near the city of Grafton, in the county of Walsh, an institution for the feeble-minded, on the grounds purchased by the secretary of the interior for a penitentiary building.

Insane

Feeble-
minded

ARTICLE VII (Adopted 1904)

Addenda to section 176:

The legislative assembly may further provide that grain grown within the State and held therein in elevators, warehouses, and granaries may be taxed at a fixed rate.

Taxing
grain

ARTICLE VIII (Adopted 1908)

The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations or of counties, or of townships, or of municipalities within the State, bonds issued for the construction of drains under authority of law within the State, bonds of the United States

Permanent
school
fund

How invest

bonds of the State of North Dakota, bonds of other States; provided, such States have never repudiated any of their indebtedness, or on first mortgages on farm lands in this State, not exceeding in amount, one third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisal of school lands.

ARTICLE IX (Adopted 1908)

Sale of
state
lands

Sec. 158. Minimum Price of State Lands. No lands shall be sold for less than the appraised value and in no case for less than ten dollars per acre. The purchaser shall pay one fifth of the price in cash, and the remaining four fifths as follows: One fifth in five years, one fifth in ten years, one fifth in fifteen years and one fifth in twenty years, with interest at the rate of not less than six per centum, payable annually in advance.

Terms

All sales shall be held at the county seat of the county in which the land to be sold is situate, and shall be at public auction and to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been especially subdivided shall be offered in tracts of one-quarter section, and those so subdivided in the smallest subdivisions. All lands designated for sale and not sold within two years after appraisal, shall be reappraised before they are sold. No grant or patent for any such lands shall issue until payment is made for the same; provided, that the lands contracted to be sold by the State shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then and thereupon the contracts of sale of such lands shall, at the election of the board of university and school lands, become null and void; and no such contract heretofore made shall be held void for nonpayment of taxes accruing on the lands described therein; provided, such taxes shall have been paid before this amendment takes effect; provided, further, that any school or institution land that may be required for townsite purposes may be paid for at any time and patent issued therefor.

ARTICLE X (Adopted 1908)

Supreme
court

Consist of
five judges

Sec. 89. The Supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum or pronounce a decision; but one or more of said judges may adjourn the court from day to day or to a day certain.

APPENDIX E

STATE EXECUTIVE AND ADMINISTRATIVE OFFICERS, BOARDS, AND COMMISSIONS, 1910

Name	Num- ber	Salary	How Chosen
Governor	1	\$5,000	elected
Lieutenant Governor	1	1,000	elected
Secretary of State	1	3,000	elected
Auditor	1	3,000	elected
Treasurer	1	3,000	elected
Superintendent of Public Instruction	1	3,000	elected
Adjutant General	1	1,800	appointed
Attorney-General	1	3,600	elected
Assistant Attorneys-General	2	2,500 each	appointed
Commissioner of Agriculture and Labor	1	3,000	elected
Commissioners of Railways	3	2,000 each	elected
Commissioner of Insurance	1	3,000	elected
State Engineer	1	2,500	appointed
Minnesota Grain Board of Appeals ..	2	3,000 each	appointed
Game and Fish Board of Control ...	5	\$3 a day	appointed
District Game Wardens	2	Fixed by Game and Fish Board	appointed
Fish Commissioner	1	Fixed by Game and Fish Board	appointed
Farmers' Institute Board of Directors	4	—	ex officio
North Dakota Conservation Com- mission	5	—	ex officio
Board of Pardons	5	\$5 a day for two appointed mem- bers	mixed
Banking Board	4	—	ex officio
Auditing Board	3	—	ex officio
Board of Trustees of Public Property	3	—	ex officio
Superintendent of Capitol	1	Fixed by Trus- tees of Public Property	appointed
State Board of Canvassers	5	—	ex officio

Name	Number	Salary	How Chosen
Commissioners of Public Printing..	3	—	ex officio
Emergency Commission.....	3	—	ex officio
Board of Equalization.....	5	—	ex officio
Board of Experts Indeterminate Sentence.....	4	\$5 a day for two appointed members	mixed
Examiner (Six Deputy Examiners)	7	\$3,000 (\$1,800 each deputy)	appointed
Board of University and School Lands.....	5	—	ex officio
Land Commissioner.....	1	\$2,000	appointed
Oil Inspector.....	1	2,500	appointed
Hotel Inspector.....	1	1,800	appointed
Coal Mine Inspector (State Engineer)	1	—	ex officio
Directors Good Roads Experiment Station (under Trustees of Public Property).....	3	—	ex officio
State High School Board.....	3	—	ex officio
High School Inspector.....	1	Fixed by High School Board	appointed
Trustees of State Institutions:			
Agricultural College.....	7	\$3 a day	appointed
Blind Asylum.....	5	\$3 a day	appointed
Deaf and Dumb School.....	5	\$3 a day	appointed
Industrial School.....	5	\$3 a day	appointed
Hospital for Insane.....	5	\$3 a day	appointed
Normal, Valley City.....	5	\$3 a day	appointed
Normal, Mayville.....	5	\$3 a day	appointed
Penitentiary.....	5	\$3 a day	appointed
Reform School.....	5	\$3 a day	appointed
Soldier's Home.....	5	\$3 a day	appointed
State University.....	5	\$3 a day	appointed
School of Forestry.....	3	\$3 a day	appointed
Institution for Feeble-Minded....	5	\$3 a day	appointed
School of Science.....	5	\$3 a day	appointed
Superintendents of Demonstration Farms:	12	Fixed by Ag. College	appointed
Sanborn			
Bismarek			
New Salem			
Beach			
Carrington			
Flaxton			

Name	Number	Salary	How Chosen
Superintendents of Demonstration Farms—cont.			
Page			
Bathgate			
Larimore			
Lakota			
Granville			
Ross			
Superintendents of Agricultural Experiment Stations:	5	Fixed by Ag. College	appointed
Dickinson			
Williston			
Langdon			
Edgeley			
Hettinger			
Directors Mining Experiment Sub-Station (Trustees of University and Dean of School of Mines)	6	—	ex officio
Directors of Biological Station (Trustees and biological staff of University)	9	—	ex officio
State Geologist.	2	\$1,000 each	ex officio
State Historical Society Directors. . .	17	\$1,800 curator, \$800 field officer	mixed
Whitestone Hills Commission.	3	—	appointed
State Library Commission.	5	—	mixed
Director of Library Extension.	1	Fixed by Lib. Commission	appointed
State Legislative Reference Librarian.	1	Fixed by Lib. Commission	appointed
Tuberculosis Sanitarium Board.	5	\$3 a day for two appointed members	mixed
Board of Health.	3	\$1,200, Secretary	mixed
Pure Food Commissioner.	1	\$500	ex officio
Dairy Commissioner (and Assistant Dairy Commissioner).	2	\$1,800 (\$1,200, assistant)	appointed
Director Serum Institute.	1	—	ex officio
Pure Seed Commissioner.	1	Fixed by Ag. College	appointed

Name	Num- ber	Salary	How Chosen
Stallion Registration Board.....	5	\$3 a day	ex officio
Live Stock Sanitary Board.....	-	\$3 a day	appointed
Live Stock Sanitary Board Execu- tive Officer.....	1	Fixed by Board	appointed
Examining Boards:			
Veterinary Medical Examiners...	3	—	appointed
Pharmacy.....	5	Secretary's fixed by Board: rest, \$5 a day	appointed
Medical.....	9	—	appointed
Dental.....	5	\$5 a day	appointed
Embalmers.....	3	—	appointed
Optometry.....	5	\$5 a day	appointed
Barber.....	3	\$3 a day	appointed
Bar.....	3	\$10 a day	appointed
Osteopathic.....	3	Fixed by Board	appointed

APPENDIX F

TENTH LEGISLATIVE ASSEMBLY, 1907

Table 1—Occupation

Occupation	Senate	House	Total
Farmers.....	8	59	67
Lawyers.....	5	9	14
Bankers.....	6	4	10
Mercantile.....	8	10	18
Implement Dealers.....	3	2	5
Real Estate.....	2	3	5
Stockmen.....	1	2	3
Physicians.....	2	—	2
Lumberman.....	1	1	2
Druggists.....	1	1	2
Hardware.....	—	2	2
Miner.....	—	1	1
Miller.....	—	1	1
Abstractor.....	1	—	1
Mfgr. Sash and Doors.....	1	—	1
Mfgr. Brick.....	1	—	1
Newspaper.....	—	1	1
Insurance.....	—	1	1
Scholar and Orator.....	—	1	1
Bridge Builder.....	—	1	1
Contractor.....	—	1	1
Total.....	40	100	140

Table 2—Nationality, Education, and Party

Total	Nationality		Education					Party	
	Am. Born	For. Born	Common School or less	High School or Acad'y	Business College	Normal	College or U.	Dem.	Rep.
Senate 40	18	22	24	6	1	1	8	7	33
House 100	54	46	71	9	6	6	8	13	87
Total 140	72	68	95	15	7	7	16	20	120

Average age: senators, 49 years; representatives, 46 years.

ELEVENTH LEGISLATIVE ASSEMBLY, 1909

Table 3—Occupation

Occupation	Senate	House	Total
Farmers.....	14	43	57
Lawyers.....	6	10	16
Bankers.....	7	9	16
Merchants.....	6	6	12
Ranchers.....	—	3	3
Real Estate.....	—	6	6
Hardware and Implements.....	2	3	5
Newspaper.....	—	3	3
Insurance.....	1	3	4
Abstractor.....	—	1	1
Plumber.....	—	1	1
Bridge Builder.....	—	1	1
Elevator Owner.....	—	1	1
Dentist.....	—	1	1
Commercial Travelers.....	—	2	2
Manufacturers.....	2	0	2
Lumber Dealer.....	1	0	0
Sheep Raiser.....	1	—	1
Miller.....	1	0	1
Contractor.....	1	—	1
Druggist.....	1	—	1
Other.....	4	2	6
Total.....	47	95	142

Table 4—Nationality

Total	Am. Born	For. Born	Nor- way	Can.	Ger.	Sct.	Eng	Swe	Ire.	Den	Ice.	Rus	Rou.
Senate 47	29	18	4	5	3	3	—	2	1	—	—	—	—
House 95	48	47	17	10	2	3	5	2	2	2	2	1	1
Total 142	77	65	21	15	5	6	5	4	3	2	2	1	1

Table 5—Education and Party

	Common or less	High	Business College	Normal	College or U.	Dem.	Rep.	Ind.
Senate	29	5	—	3	10	8	38	1
House	60	14	2	5	14	6	88	1
Total	89	19	2	8	24	14	126	2

Average age: senators, 49 years; representatives, 44 years. New members: senate, 34; house, 67.

APPENDIX G

SIXTY-FIRST CONGRESS AND ELECTORAL VOTE OF THE STATES

<i>States</i>	<i>Senate</i>	<i>House of Representatives</i>	<i>Electoral Vote</i>
Alabama.	2	9	11
Arkansas.	2	7	9
California	2	8	10
Colorado.	2	3	5
Connecticut	2	5	7
Delaware.	2	1	3
Florida	2	3	5
Georgia.	2	11	13
Idaho.	2	1	3
Illinois.	2	25	27
Indiana.	2	13	15
Iowa	2	11	13
Kansas	2	8	10
Kentucky.	2	11	13
Louisiana	2	7	9
Maine.	2	4	6
Maryland	2	6	8
Massachusetts	2	14	16
Michigan.	2	12	14
Minnesota.	2	9	11
Mississippi.	2	8	10
Missouri.	2	16	18
Montana.	2	1	3
Nebraska	2	6	8
Nevada.	2	1	3
New Hampshire.	2	2	4
New Jersey.	2	10	12
New York.	2	37	39
North Carolina.	2	10	12
North Dakota	2	2	4
Ohio.	2	21	23
Oklahoma.	2	5	7
Oregon.	2	2	4
Pennsylvania.	2	32	34

<i>States</i>	<i>Senate</i>	<i>House of Representatives</i>	<i>Electoral Vote</i>
Rhode Island	2	2	4
South Carolina	2	7	9
South Dakota	2	2	4
Tennessee	2	10	12
Texas	2	16	18
Utah	2	1	3
Vermont	2	2	4
Virginia	2	10	12
Washington	2	3	5
West Virginia	2	5	7
Wisconsin	2	11	13
Wyoming	2	1	3
Total	92	391	483

TERRITORIES

	<i>Delegates</i>
Alaska	1
Arizona	1
Hawaii	1
New Mexico	1

INDEX

A

Adams, John, 46, 62
 Adams, J. Q., 63, 78
 Agricultural College, 215, 216, 308
 Agriculture, Department of, Federal, 90, 140; State, 211
 Agriculture, Federal aid to, 301
 Aids-de-camp, 203
 Aldrich, Senator, 103
 Ambassadors, 78, 140
 Amendments to Federal Constitution, 57; purpose of, 162-166
 Amendments to State Constitution, 181, 196
 Anarchy, 26
 Annapolis, 87
 Appeal, of cases, 245-246
 Appellate jurisdiction, 132, 238
 Aristocracy, definition, 23; examples, 23
 Aristotle, quoted, 15
 Armstrong, quoted, 190
 Army, 81; cost of, 140
 Articles of Confederation, 42-44; text, Appendix A, i
 Assessment, of property, 264; defects, 265; of corporations, 305
 Assessors, county, 258; local, 264
 Attorney-General, Federal, 83; State, 204, 211
 Auditing Board, 205
 Auditor, State, 209; county, 254
 Australian ballot, 294

B

Bad Lands, 184
 Bail, 235
 Ballot, 294
 Banking, 149-153
 Banking Board, 205
 Billings County courthouse, 250
 Bill of Rights, 172, 173
 Bills, in Congress, 120, 124; in State legislature, definition, 222; Method of passing, 222; number introduced, 225, 226
 Bimetallism, 146-147
 Bismarck, capital, 192; convention at, 193-195
 Blind Asylum, 215, 273
 Board of Equalization, 205, 206
 Board of Health, 262
 Board of Insanity, 272
 Board of Pardons, 205, 206
 Board of University and School Lands, 205; composition and work, 303
 Boards and Commissions, 212-214; types of, 213-214; appointive, 213; ex officio, 214; mixed, 214; names of, Appendix E, lxxix
 Bonaparte, quoted, 290
 Boss, 289, 290
 Boston Tea Party, 41
 Bribery, 175
 Bryan, nomination of, 63
 Bryce, quoted, 20, 30, 60, 65, 99, 106, 108, 121-124, 222, 231-232, 288

Buchanan, President, 191
 Budget, national, 80, 139; county,
 276; State, 299-301; school dis-
 trict, 319
 Burgesses, House of, 38
 Burr, 62

C

Cabinet, 76
 Calaboose, 270
 Campaign, political, 293
 Cannon, Speaker, 109, 110
 Cass County budget, 276
 Caucus, 289
 Cavour, quoted, 20
 Census Bureau, 95
 Charity, 249, 270
 Charles I, execution of, 35
 Checks and balances, 60, 101
 Child labor, 315
 Chisholm vs. Georgia, 134
 Choteau, Pierre, 190
 Church, 16
 Circuit Courts, 132
 Circuit Courts of Appeals, 132
 Citizen, definition, 17; rights and
 duties, 16
 City, 278-285; home rule, 278;
 mayor and council plan, 279;
 commission plan, 283
 Civil actions, 235; procedure,
 244
 Civil service, 71-72; commission,
 96
 Civil township, 259
 Clay, Henry, 63
 Clays, North Dakota, 198
 Clerk of court, county, 255
 Cleveland, President, 65
 Coal, 187, 198
 Colonel, 203
 Colonies, 117
 Commerce Clause, 115
 Commerce and Labor, Depart-
 ment of, 93, 140

Commission plan, city govern-
 ment, 283
 Committee system, of U. S. Sen-
 ate, 102; House, 108, 111; of
 Congress, 121-124; evils of, 122;
 benefits, 123; in State senate,
 206; State house, 222-223
 Common law, 35
 Common schools; Federal grants
 to, 157; State system of, 308;
 budgets of, 319. See Educa-
 tion
 Communism, 25
 Compromises of Constitution, 46-
 47
 Comptroller of Currency, 150
 Compulsory education, 315
 Confederation, 43-45
 Congress, 113-126; powers of,
 114; output, 125; committees
 of, 121-124
 Congressional Library, 95, 96
 Congressional Record, 125
 Congressional township, 160
 Connecticut plan, 46
 Consolidated school, 308-310
 Constables, 258, 269
 Constitution, British, 22; defini-
 tion, 27; need of, 27; British in
 America, 30
 Constitution, Federal, 45-49; sign-
 ers, 50-51; ratification, 48, 51,
 56; analysis, 54-58; text, Ap-
 pendix B, ix
 Constitution, State, 171; analyzed,
 171-181; two plans, 195; text,
 Appendix D, xxxv
 Constitutional government, 21
 Constitutional convention, Na-
 tional, 45; State, 194-195
 Consular service, 79-80
 Continental Congress, first, 41;
 second, 42-43
 Conventions, constitutional (Fed-
 eral), 45; (State), 194-195;
 nominating, 289

Cooley, advice of, 195
 Coöperation, farmers', 198
 Coroner, 258
 Corporations, Federal tax, 143;
 not citizens, 156; protection of
 by courts, 166; franchises, 166-
 167; State constitutional pro-
 visions for, 177-178; assess-
 ment of public service, 305;
 State tax, 306
 Council, city, 279
 County courts, 237; of increased
 jurisdiction, 237
 County government, 249; county
 seat, 251; officers and organiza-
 tion, 251, 253, 180; treasurer,
 254; sheriff, 255; superintend-
 ent of schools, 257; surveyor,
 258; boards of health, 262;
 poor, 271; poor farm, 272; hos-
 pital, 272; finance, 276
 Court of Claims, 133
 Courts, Federal, 128; officers of,
 135; State, 229; officers of, 230;
 county, 237
 Crawford, 63
 Credit, definition of, 147
 Crime, definition, 235
 Criminal actions, 235; procedure,
 243
 Currency, 147-150; comptroller
 of, 150

D

Dakota Territory, 191
 Deaf and Dumb School, 215,
 273
 Debt, Federal, 145; State, 180,
 306; local government, 265;
 limit for city, 280
 Declaration of Independence, 42,
 43
 Declaration of Rights and Griev-
 ances, 41

Democracy, definition, 23; pure
 and representative, 23, 24;
 Cavour's opinion, 20; Bryce's
 opinion, 20
 Despotism, 21
 Diplomatic service, 78
 District courts, Federal, 132;
 State, 231, 237
 District of Columbia, 117
 Dole, quoted, 241
 Domestic violence, 155
 Dunn, quoted, 19
 Duties, defined, 17; classified, 17,
 18

E

Education, U. S. Commissioner
 of, 90; provisions for in State
 Constitution, 179; State super-
 vision of, 209; local government,
 249; cities, 281; State system of,
 308-317; branches taught, 314;
 compulsory, 315; support of,
 300, 315-317
 Edward VI, 22
 Elections, 288-295; frauds, 295
 Elective franchise, 177
 Electoral college, 64
 Electors, qualifications, 294
 Emergency clause, 225
 Emergency commission, 205
 Enabling Act, 193; text, Appen-
 dix C, xxiv
 Enacting clause, 175, 225
 Equalization, local and State
 Boards of, 264; work of, 264;
 State Board, 305
 Equity, 134-135
 Error of trial judge, 246
 Executive, 26; Federal, 55-56,
 59-96; State, 176, 201-219
 Expenditures, Federal, 140; State,
 297; limit, 298; objects, 299-300
 Extradition, 156

F

Fairlie, quoted, 258
 Family, importance, 18
 Farrand, quoted, 188
 Federal courts, 128; early weakness of, 128
 Federalist, The, 49
 Federal judges, 130
 Federal principle, 27, 53, 161-165
 Feeble-minded Institute, 215, 272
 Fees, 253, 304
 Felony, 235
 Finance, Federal, 139; local, 249, 263; State, 297-306
 Fines, 304
 Fisheries, bureau of, 95
 Flags, for schools, 312
 Foreign affairs, Department of, 78
 Forestry, 91; State school of, 215, 217
 Forfeitures, 304
 Franchises, as contracts, 166; perpetual, 167; public service corporations, 281, 285
 Franklin, 46
 Frederick William IV, opposes constitution, 22
 Free coinage, 146
 Free textbooks, 312
 Functions of local government, 249, 261-273

G

Garfield, President, 71
 Geological survey, 90
 George III, 40
 Gladstone, quoted, 46
 Gold, 146; certificates, 147-149
 Good roads, U. S. Division of, 92; local government, 249; State system of, 266-269
 Government, necessity of, 15; nature, 15; definition, 16; kinds,

16, 20; miscellaneous doctrines of, 24-26; branches of, 26, 39-40; English background, 30; representative, 34, 38; colonial, 39, 40, 43; Revolutionary, 42-43; Confederation, 43; early State, 43; under Constitution, 45; cost of, 140-142; republican guaranteed, 155
 Governor, 201, 224
 Grand jury, 240
 Greenbacks, 147-149
 Guizot, quoted, 59

H

Habeas Corpus, 238
 Hamilton, 46, 49, 80
 Harrison, President, election of, 65; proclamation of admission, 196; quoted, 44, 67-68, 87, 88
 Hay, John, 78
 Hayes, President, 64
 Hay permits, 302
 Health, see Public Health
 High school board, 206, 313
 High school inspector, 314
 High schools, 308, 313
 Historical Society, 205
 Hold-over senators, 221
 Homestead, 159
 House of Representatives, Federal, 54, 106-111; long and short session, 112; speaker, 107-110
 House of Representatives, State, 175, 220-222, 224, 225
 Hudson Bay Company, 189

I

Impeachment, Federal, 73, 130; State, 175, 180, 205, 225, 231
 Independent school district, 310-311; budget, 319-320

Indians, of Dakota, 89, 187;
Sioux, 188, 190; Algonquin,
188; Crees, 188; Grosventres,
188; Mandans, 188; Massacre,
190

Individual nominations, 293

Indoor relief, 271

Industries, income from State,
304

Inheritance tax, 306

Injunction, 238

Insane Asylum, 214, 272

Insurance department, 210

Interest, on land contracts, 303-
304

Interior Department, 87-90

Internal improvements, 158

Interstate Commerce Commission,
96

Interstate comity, 155

Invasion, 155

J

Jackson, President, 63; and spoils
system, 71

Jail, 265-270

Jay, 44, 49, 62

Jayne, Governor, 192

Jefferson, President, 46, 62, 78,
160

Johnson, President, 73

Johnston, Alexander, quoted, 128-
129

Judicial procedure, 234-246

Judiciary, Federal, 27, 56, 59,
128-137; State, 177, 229-232

Judiciary ballot, 229

Jurisdiction, of Federal courts,
133-134

Jury, system, 238, 240; grand,
240; petty, 241; criticism of,
241

Justice, Department of, 82-83

Justice of peace, 236, 258

L

Labor, Bureau of, Federal, 94-
95; State, 211

Labor tax, roads, 267

Land, 179; granted in Enabling
Act, 193; grants to institutions,
214-215; income and manage-
ment of, 301-303

Land commissioner, 303

La Verendrye, explorer, 188

Law, due process of, 33; common,
35; enforcement of, 204; special,
forbidden, 221

Law department, State, 211

Lawmaking, Federal, 120-126;
State, 222, 225, 226

Legislative branch, Federal, 26,
54, 59; State, 220-227

Legislative reference library, 226-
227

Leonard, geologist, quoted, 185

Lewis and Clark, 188

Licenses, 304

Lieutenant governor, 206

Lincoln, nomination of, 63; ap-
points first territorial governor,
192; quoted, 38, 77, 234

Line, army, 81; militia, 204

Live stock sanitary commission,
212

Lobby, 224

Local courts, 235

Local government, 249-273

Lord Selkirk, 189

M

"Machine," 289, 290

McHenry County courthouse,
252

McKinley, President, 72

McVey, quoted, 190, 234

Madison, President, 46, 49, 78

Magna Charta, 30-34

- Mail, free delivery, 85; sending money by, 86
 Mandamus, 205, 238
 Mandan Territory, 191
 Manual Training School, 308
 Manufactures, Bureau of, 95
 Map, North Dakota, 182
 Marbury vs. Madison, 136
 Marshal, village, 269
 Marshall, Chief Justice, 114, 128, 136
 Mayor, 279, 281
 Melette, Governor, 195
 Militia, 180, 203
 Mint, Philadelphia, 146
 Misdemeanor, 235
 Monarchy, definition, 20; classes, 21-22
 Money, 146-149
 Monroe, President, 78
 Moses, theocracy of, 21
- N
- Nationality, North Dakota population, 197; State legislative assembly, Appendix F, lxxxiii, lxxxiv
 National banks, notes of, 147-149, 150; system, 149-153; weakness of, 152-153
 National forests, 91
 National Guard, 203
 Nativity of population, 197
 Naturalization, 256
 Navy, 86; cost of, 140
 New trial, 245
 New Ulm massacre, 190
 Nihilism, 25
 Nominations, 288; need of, 288; methods, 289; caucus and convention, 289; primary election, 291; nonpartisan, 293; independent, 293; of judges, 229
 Nonpartisan judiciary ballot, 292
- Normal and Industrial School, 215, 217
 Normal schools, 208, 215, 216
 North Dakota, see State
 North Dakota, battleship, 87
 Northern Pacific Railway, 158
 Northern Securities case, 137
- O
- Oligarchy, 23
 Organization, party, 289, 292-293
 Original jurisdiction, 238
 Outdoor relief, 271
- P
- Page, road expert, quoted, 268
 Panama Canal, 117-118, 140
 Parks, city, 281
 Party, committees and organization, 289-293
 Patents, 89
 Patriarchy, 21
 Pauper roll, 270
 Pembina, early settlement, 184, 189; county courthouse, 251
 Penitentiary, 214
 Pennsylvania, criticism of Federal courts, 128
 Pensions, 88; bills, 126; cost of, 140
 Permanent funds, source and control of, 301-303
 Permanent school fund, source and control, 317
 Persia, government of, 22
 Petty jury, 241
 Philadelphia convention, 45, 48
 Philippines, 117
 Phillips, quoted, 241
 Pierce, President, 77
 Pinchot, Forester, 91
 Pinckney, Charles C., 62

- Pocket veto, President, 73; governor, 202
- Police and justice, courts, 236; in local government, 249, 269
- Police power, 167
- "Political animal," 15
- Political parties, 288-295
- Poor farm, 272
- Population, Dakota Territory, 192; North Dakota, 196; race mixture, 197
- Postage, rates, 85
- Post office department, 83-86; telegraph under, 86; cost of, 140
- Preamble, 172
- Preëmption, 159
- President, 60; nomination, 60; election, 63; qualification, term, salary, 65; oath, 66; powers and duties, 66-73
- Primary election, North Dakota law, 291, 100
- Printing office, government, 96
- Private bills, in Congress, 110, 125-126; in State legislature, 226
- Prohibition, in North Dakota, 180-181
- Prohibitions; on Congress, 119-120; on States, 180
- Property, 33; protection of, 165; rights, 234
- Protection, life and property, 234; to American manufacturers, 142-145
- Public administrator, 257
- Public domain, 156, 179. See Land
- Public finance, 134-146
- Public health, laboratory, 213; work of local government, 249; control of communicable disease, 261; prevention of disease, 262; vital statistics, 262; boards of, State, 214, 263; county, 262; township, 262; city, 282
- Public lands, survey, 88, 160; disposal of, 156. See Land
- Public works, State, 180
- Pupil, 315
- Pure food, Federal law, 92; State commissioner, 212

Q

- Quorum, 55, 175
- Quo warranto, 239

R

- Railroads, Federal aid to, 158; need of, 190; Northern Pacific, 190, 197; Dakota Southern, 191; Great Northern, 191, 197; Minneapolis, St. Paul, and Sault Ste. Marie, 197; Chicago, Milwaukee, and St. Paul, 197; State commission, 210; assessment, 305
- Reed, Speaker, 109, 110, 140
- Reform School, 215, 270
- Register of deeds, 256
- Religious liberty, 193
- Rent of land, State, 302
- "Repeating," 295
- Republic, definition, 24; examples, 24; France and United States compared, 28
- Revenue, Federal, 141; for 1908, 143; collection of, 145; State, 180; proper sources, 297; sources, 300-301; from U. S., 301; investments, 301; interest, 301; land, 302; industries, 304; fines, forfeitures, fees, and licenses, 304; taxation, 304
- Rights, definition, 17; classification, 17; personal, 33, 234; property, 33, 234; petition, 33; English, 30, 36, 39

"Ring," 289-290
 Roads, 266-269
 Rolette, 189
 Roosevelt, President, 77, 93
 Rules, committee on, House of
 Representatives, 111; State leg-
 islative assembly, 224
 Russia, government, 21; nihilism
 in, 26

S

Salary, Federal officers, see re-
 spective officers; State officers,
 governor, 201; lieutenant gov-
 ernor, 206; other officers, 209
 School age, 315
 School board, 312
 School district, types of, 309-311;
 budgets of, 319-320
 School lands, see Land
 School of Forestry, State, 308
 School of Mines, 214, 216, 308
 School of Science, 217, 308
 Schools, support of, 315-317;
 branches taught, 314; State
 system of, 308-317. See Edu-
 cation
 Secretary of State, Federal, 77;
 State, 209
 Senate, Federal, 54, 99-104; com-
 mittees of, 102; nomination of
 Senators, 293
 Senate, State, 175, 220-222, 224,
 225
 "Senatorial courtesy," 70
 Sheriff, 269
 Silver, 146; certificates, 147-149
 Slavery, 47
 Smith, Adam, quoted, 139
 Smith, Harlan I., quoted, 188
 Smoot, Senator Reed, 102
 Socialism, 25
 Society, defined, 16
 Sociology, 16
 Soldiers' Home, 215
 Sovereignty, defined, 16; resides
 where, 28
 Speaker of House, 107, 108-110;
 Reed, 109-110; Cannon, 109-
 110
 Special assessment, 280
 Spoils system, 71
 Staff, army, 81; militia, 203-204
 Stamp Act Congress, 30, 41
 Starch subsidy, 300
 State, definition, 16; origin, 18;
 relation of States to nation,
 155-169; sovereignty of, 161;
 police power, 167; functions of,
 297
 State (North Dakota), location
 and area, 183; topography, 183;
 Bad Lands, 184; climate, 185;
 resources, 187, 198; exploration,
 188; settlement, 189; admitted
 to Union, 196; institutions, 214-
 215; industries of, 297, 300; aid
 to High Schools, 313
 State Board of Equalization, 305
 State Board of Health, 214, 263
 State Conservation Commission,
 206
 State High School Fund, 316
 State institutions, 214-215
 State's attorney, 204, 256
 State Tuition Fund, 315-316.
 See Permanent School Fund
 State University, 214, 308
 Street car company, assessment
 of, 305
 Street railway, owned by State,
 297, 300, 304
 Subsidies, 299-300
 Subtreasury system, 146
 Suffrage, in colonies, 40; State,
 177-178
 Sugar beet subsidy, 300
 Superintendent of Public Instruc-
 tion, 209
 Support of schools, 315-317
 Supreme Court, Federal, 130-132;

State, 229; procedure, 239;
 declaring statutes void, 246 Twine plant, State, 297, 300, 304
 Tyranny, defined, 21

T

Taft, President, 73
 Tariff, 141, 142, 144-145; on
 sugar, 144
 Taxation, in Magna Charta, 31;
 counting slaves for, 47; Federal
 power of, 114-115; direct, 119;
 indirect, 141-143; whisky, 142;
 beer, 142; tobacco, 143; corpo-
 rations, 143; paid by whom,
 143-145; State, 180; system and
 machinery, 263-265, 304-306,
 315-316
 Teacher, 314; teachers' institute,
 314
 Telegraph, 86; assessment, 305
 Telephone, 198; assessment, 305
 Theocracy, 21
 Town meeting, minutes of, 38, 39
 Township, civil, organization of,
 180; government and officers,
 249, 259; board of health, 262
 Township, congressional, 160-161
 Trade, restrictions, 40, 41
 Treasurer, State, 209
 Treasury Department, 80
 Tree bounty, 300
 Trustees, State institutions, 203;
 public property, 205
 Trusts, 93-94
 Tuberculosis Sanitarium Board,
 205
 Turkey, 21

U

University, 214, 216

V

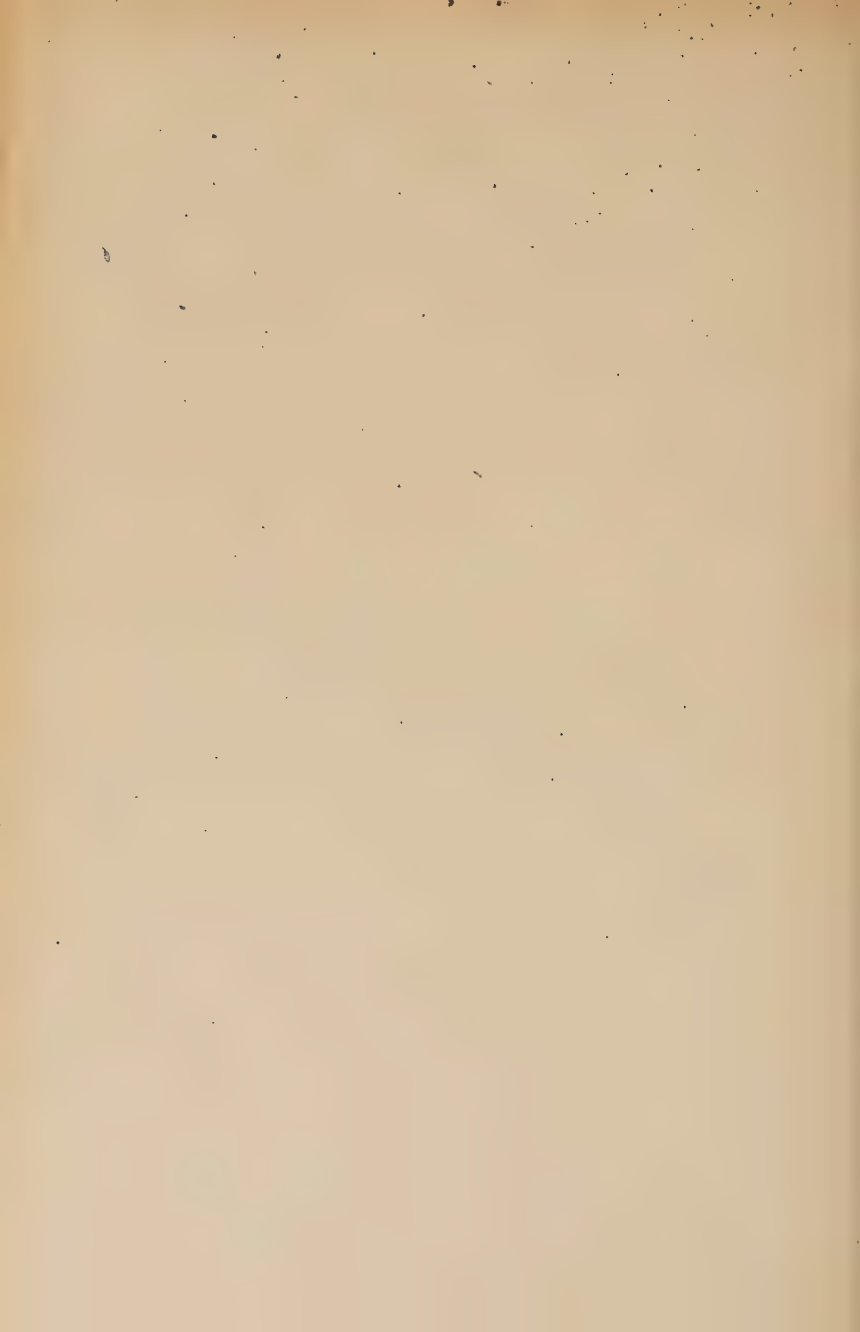
Veto, by President, 72, 73; pocket,
 73; by governor, 202, 224
 Vice President, 73
 Village, 249-260
 Virginia, reply to Pennsylvania,
 129-130

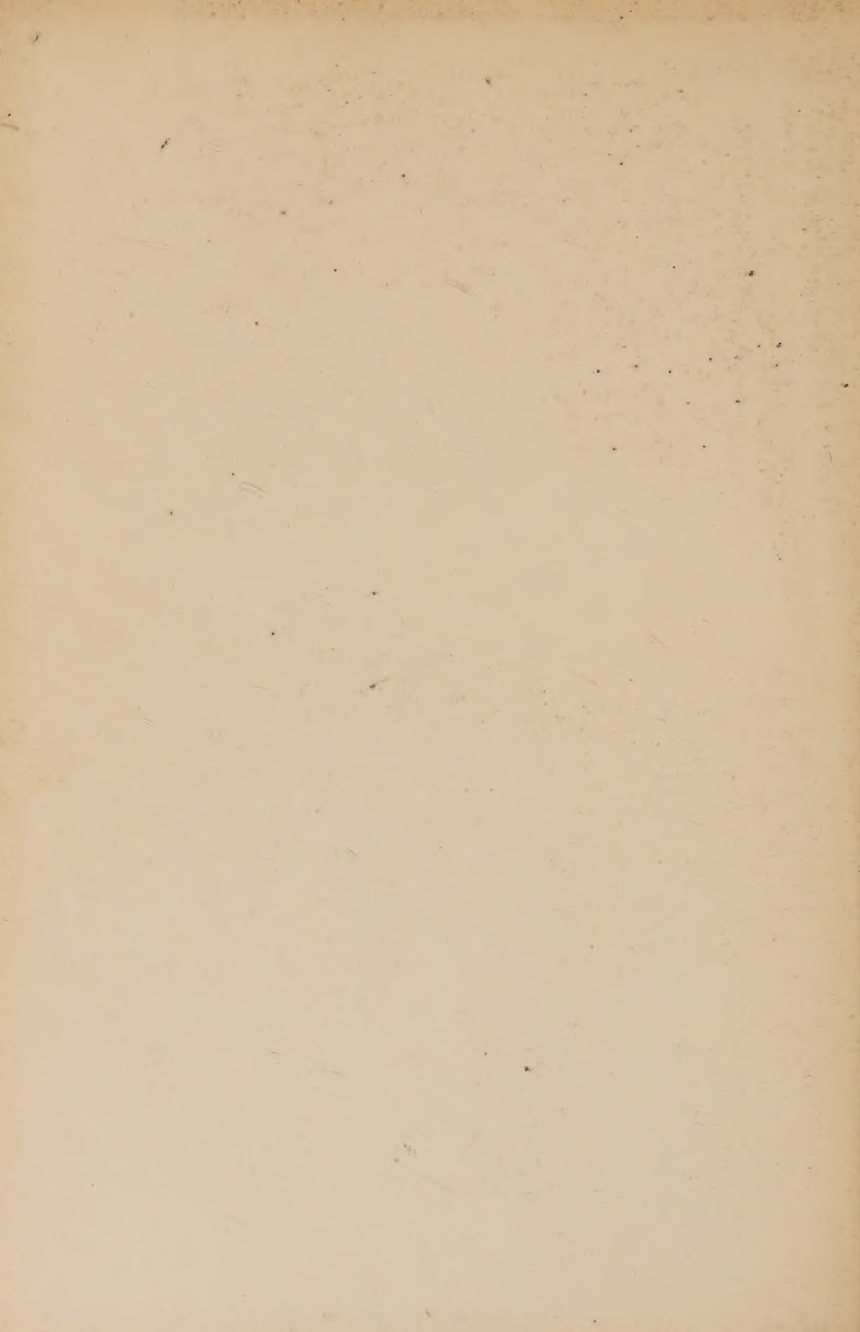
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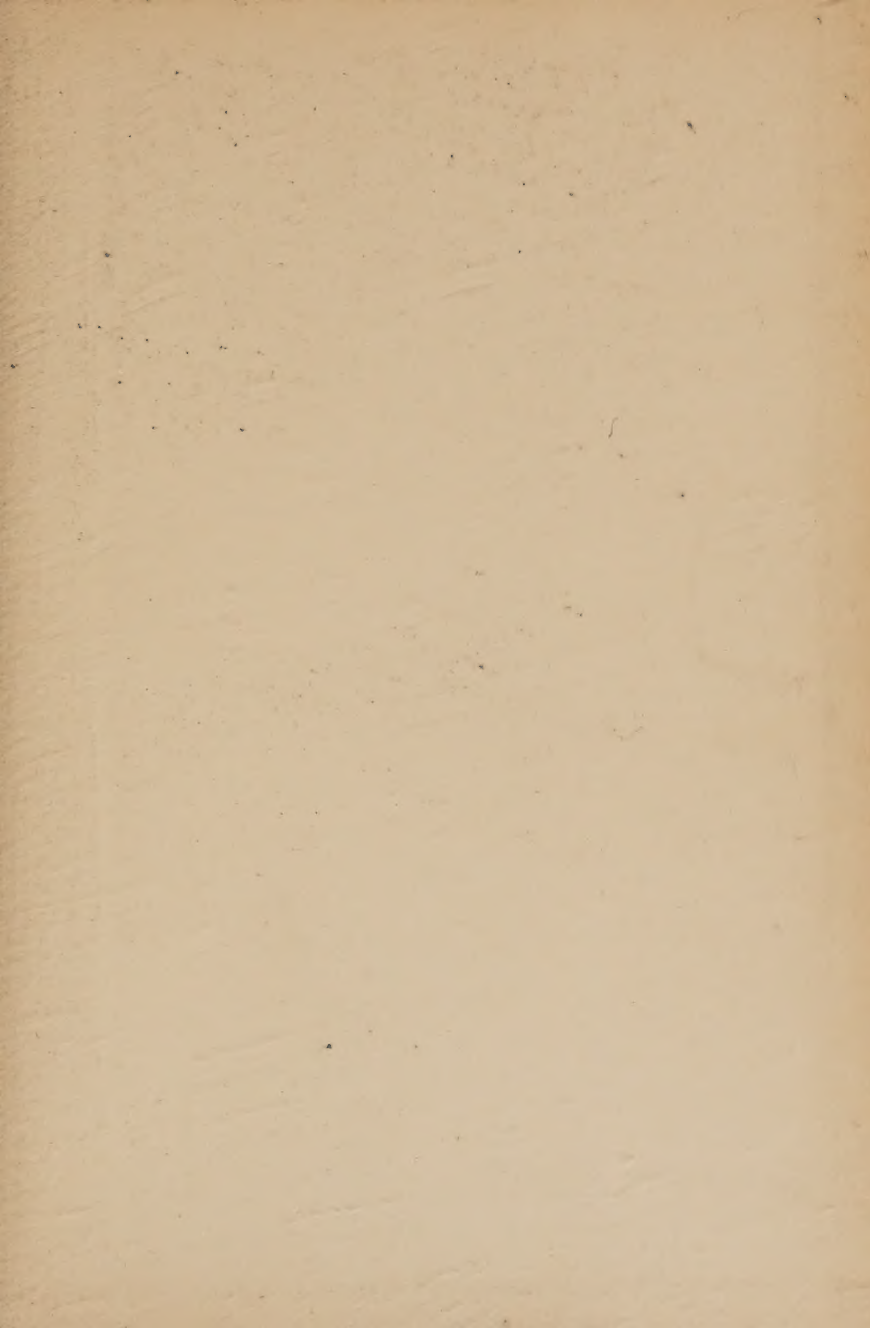
Wall Street, 81
 Wanamaker, Postmaster-General,
 84
 War Department, 81
 Washington, President, 44, 45, 46,
 48, 49, 62, 86, 137
 Weather Bureau, 90
 Webster, 78
 West Point, 82
 Whisky tax, 142
 Wilson, Woodrow, quoted, 99
 Wolf bounty, 300
 Workhouse, county, 269

Y

Yankton, capital, 192







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